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FOREIGN INVESTMENT IN THE UNITED STATES

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HEARING

BEFORE THE

SUBCOMMITTEE ON FOREIGN COMMERCE AND TOURISM

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

FEDERAL COLLECTION OF INFORMATION ON FOREIGN INVESTMENT IN THE UNITED STATES

JULY 19, 1990

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FOREIGN INVESTMENT IN THE UNITED STATES

THURSDAY, JULY 19, 1990

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON FOREIGN COMMERCE AND TOURISM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m. in room SD–106, Dirksen Senate Office Building, Hon. J. James Exon presiding.

Staff members assigned to this hearing: Loretta Dunn and Ivan Schlager, staff counsels and Fiona Branton, minority staff counsel.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. The subcommittee will please come to order. We are here today to review the collection and analysis of information on foreign ownership. Earlier this year, I introduced the Foreign Investment Analysis Act with Congressman Lent on behalf of the Bush Administration.

I first want to acknowledge the fine work of many of my colleagues in the House and in the Senate who have looked at foreign investment data and collection and analysis, and have proposed many worthwhile improvements. Congressmen Sharp and Bryant, and Senators Harkin and Murkowski, have made significant contributions in the debate and consideration on this issue.

I am most interested in exploring the common ground between the various proposals before the Committee, and want to find a way to quickly move much-needed legislation to improve the quality and the usefulness of information on foreign investment. The President and his Administration also merit congratulation for their recognition of the need to improve foreign investment data collection.

The policy change represents a dramatic victory for those of us in the Congress who have worked for so long on the foreign investment issue. The legislation that Congressman Lent and I have introduced attempts to put forward a consensus position on this very important issue.

The good Government approach of the Exon-Lent bill will facilitate a more complete collection and analysis of foreign investment data without imposing new burdens on business or compromising the confidentiality of statistical information. Our legislation would allow the Bureau of Economic Analysis and the Bureau of the Census, both agencies of the U.S. Department of Commerce, to cooperate and share data on foreign investment. The information would be used for statistical analysis, and the confidentiality of data submitted to both agencies would be strictly protected.

The fruits of this legislation will provide a constructive addition to the debate on the rule that foreign ownership should play in the U.S. economy. As author of the Exon/Florio law, which gave the President the power to investigate and if necessary stop foreign purchases of American companies in the national security sector, I am most concerned about the impact of foreign ownership on the national security.

As a member of this Committee and of the Budget Committee, I am also concerned about the risk of America selling off some of its future prosperity. In a capitalistic system, it does matter who owns the business assets and technology. The American economic policy must be concerned about the creation of American wealth and international economic leadership, as well as the creation of American jobs.

A better understanding of the level of foreign ownership will help the Congress and the President better craft economic policy. Among the policies encouraged by the public concern about the increasing level of foreign investment could be a better use of the Exon/Florio law, a stronger effort to reduce the Federal budget deficit, and more aggressive U.S. technology policy and an active effort to increase U.S. competitiveness.

The Committee is also interested in comments about the implementation of the Exon/Florio law. Since its enactment, there have been over 400 filings reviewed by CFIUS, resulting in ten full investigations and one disinvestment. In general, I believe that the statute has been fairly and faithfully implemented. The Committee has met very strict time deadlines under the law, which limited staff and its resources. I am personally aware of the long hours responsible for the administration of the Exon/Florio law, and salute them for their work and conscientious and diligent pursuit of the goals we have outlined.

This is not to say that I agree with every recommendation of the Committee or the decision by the President. However, my disagreements are with policy decisions of the Administration, and not with the structure of the law or the implementation of that law. In this regard, I endorse the action of the Senate Banking Committee, which voted to reauthorize the Exon/Florio law without substantive change.

I encourage Congress to resist efforts to dramatically change the Exon/Florio law. In the short, it is time, I would suggest, to enforce everything that we now have on the books, and certainly the Exon/Florio law can count several important achievements in this area. First, it has forced the Administration, Congress and the American people to confront and examine the impact of foreign ownership on America's top industrial and technological assets. Second, even when the statute is not used to its fullest extent, the Exon/Florio law has worked to protect national security. In several of the cases which have been publicly discussed, the Administration secured accommodations to U.S. national security interests which would not have been possible but for the Exon/Florio law.

Third, the law has caused America's businesses to carefully consider the implications of foreign acquisitions, and fourth, perhaps most importantly, the law has instituted political accountability. The President has the power and the responsibility to protect the national security interests in foreign takeover situations. Ultimately, the President is accountable to the American people.

As I mentioned, the Committee has a very full schedule today. I would ask all witnesses to limit their oral statements to no more than five minutes. The full printed testimony will be included in the record, and is so included without objection.

So that the Committee can have a fair consideration of all the witnesses, the Committee will use timing lights to assist the witnesses in keeping track of their time, and with that I am very pleased to welcome the two distinguished witnesses that we have today and to get right into the matter.

I have a statement that Senator Hollings would like to have included in the record.

[The statement follows:]

OPENING STATEMENT BY THE CHAIRMAN

I commend Senator Exon for agreeing to chair this hearing on the important subject of foreign investment. He has provided invaluable leadership on this issue over the last three years.

Interest in the issue of foreign investment has increased in recent years. As a result of the borrowing binge that America undertook in order to finance the Reagan Era deficits, this Nation has sold off many of its assets. Some have said that in this wave of multinational corporations operating in a global economy, it does not matter who owns the assets. A legitimate response to that argument is: "What kind of capitalism is that? If I am in business, I want to own the business."

As we debate both sides of this issue, we must have accurate statistics on the degree of foreign investment in our economy in order to gauge more completely its impact on our economy. S. 2516, the bill offered by my able colleague from Nebraska, Senator Exon, provides for this important function by ensuring a more complete statistical picture. I look forward to the testimony of our distinguished witnesses on this legislation.

Senator **EXON**. Our first witnesses this morning in the matter before us are the Hon. Frank Murkowski, a good friend and colleague of mine from the state of Alaska, and the Hon. Philip Sharp from the House of Representatives. I would like to call those two witnesses to the table if they can. Normally, we would recognize a member of the Senate first; however, I would explain to Senator Murkowski that Congressman Sharp has a very tight schedule. Would you mind if he would go first? Senator, would that be satisfactory with you?

Senator **MURKOWSKI**. Very much, Mr. Chairman, and I am looking forward to hearing the remarks of my learned colleague. I might learn something too.

Senator **EXON**. In order to accommodate our distinguished friend from the other side of the Hill, I will recognize you at this time, Mr. Sharp, and please proceed with your testimony.

STATEMENT OF HON. PHILIP R. SHARP, U.S. REPRESENTATIVE FROM INDIANA

Mr. **SHARP**. Thank you very much, Senator Exon. It is very courteous of you and Senator Murkowski to let me go forward. I am supposed to chair the full House of Representatives in a few moments on some critical appropriations legislation, and I appreciate your courtesy and we were delighted to have you before our Committee on the House side a few weeks ago.

Senator, you have been one of the leaders in this critical issue of trying to examine foreign direct investment in this country, what it means to our economy, what it means to our national security, and when we should draw a line, because all of us know that much of this investment is very important to us economically. It creates jobs, it helps stimulate our economy, it is reciprocal in the sense that we do it elsewhere around the world. And so our goal is not to prevent foreign direct investment, but our goal is to know what is going on, and when we find an example that we believe is not in our national security interest, that we will stop it. And that is a tough judgment to make.

You took the lead on the trade legislation to see to it that the authority was there for the President to make judgments when we should not allow a foreign direct investment, and on one occasion he has done that. But, as you know, as your legislation suggests and our legislation, which builds on your efforts suggests, there are serious data problems for the Congress and for the Administration on this issue.

The legislation that I have introduced, along with Congressman Lee Hamilton of Indiana, the Chairman of the Joint Economics Committee, and Congresswoman Nancy Johnson, is not unlike yours in an effort to see that we have the information we need in a form that is usable, not just for the question of direct investment, but for other issues that we face in the House and Senate.

Basically, our legislation would, as yours does, create data sharing so we bring together the mountains of data that we collect from business and industry in this country, but which frankly, much of which is not very usable in form.

Secondly, what we would do is see to it that we have an annual report from the Secretary of Commerce on this newly merged data, with a good analysis of what is in fact happening in our economy on foreign investment.

Third, in order to guarantee that we are getting a competent and effective analysis, we would have the General Accounting Office do as we ask it to do on so many other issues in the Federal Government: for five years provide us an analysis of whether or not the data merging was done effectively and accurately, whether or not the Commerce Secretary's report is a sensible one. In other words, the goal is, as we get started on a better process for handling information, is to see to it that we get it started right, and it always helps to have somebody looking over your shoulder, and that is why we have the General Accounting Office that do that.

There is a fourth element that I think is critically important too, and that is that we are going to maintain confidentiality according to the rules and regulations that we have established for many, many years in how to handle some of these pieces of data which affect competition, and if they were out on the table would undermine the ability of an effective, aggressive entrepreneur in this country to advance. We know that kind of activity is one of the hallmarks of an innovative, effective economy. It is one of the things that has made us a leader worldwide. We are not interested in jeopardizing that, but we do need to know information.

So we maintain those rules of confidentiality. People working in the Federal establishment under those rules are probably something like 350 people now, perhaps another 1000 under contract to the Department of Commerce. What we are talking about is expanding that in the Department of Commerce to about 70 more people, and in the General Accounting Office, where this issue has been raised in this legislation, to probably a half a dozen. So, we are not expanding the universe dramatically of who is likely to know, and therefore might spill the beans and have to worry about.

Most importantly, what we are doing is saying, if the General Accounting Office can look at the confidential records of taxation of a business in this country, if they can go in and examine very high security contracts at the Department of Defense when we ask them to, why is it that we would be afraid to let them examine this kind of data? I just find it almost ludicrous that this is an argument that we are having.

Finally, and I will try to close quickly, Senator, as you know, there is great value in us doing this, and that needs to be emphasized here. First, to see to it that the process you set up works, we want to make sure that CFIUS, that Committee for Foreign Investment, has the information it needs to make a smart judgment.

But, secondly, this has ramifications for lots of policy questions that you and I are called on to make beyond just the question of foreign direct investment. We have had legislation in the House of Representatives—you have it in the Senate—dealing with antitrust, which seeks to make a differential between a foreign-owned firm and an American-owned firm. We have legislation under consideration now, about subsidies on research. Again, trying to distinguish between what is foreign-owned and what is domestic-owned. We are having a discussion about tax policy in that budget summit, and people are talking about differences between foreign-owned and domestic-owned, and yet, the information that we have to make that judgment on is pretty shallow.

When we take a major conglomerate in this country which is foreign-owned, and we categorize it as simply "petroleum industry", even though it is into mining, even though it is into retail distribution, even though it is into a whole host of other activities, and all we know about it is we just classify that as if it is petroleum, we are missing out what the world looks like altogether. We do not even begin to have an accurate picture, and yet we are called on to make discriminating judgments about what is important to our economy, what we should tax as foreign or domestic, what we should regulate in terms of antitrust.

So, Senator, again, I applaud greatly your leadership and efforts on this whole issue of foreign investment, and would urge you to examine the proposal that we have put forth. Much of it is very much like your own, and we would very much like to work with you. I truly appreciate your courtesy because of the House schedule and letting me go first, and thank you, Senator Murkowski. Senator Murkowski has also been a leader in this issue.

[The statement follows:]

Congreſs of the United States
Washington, DC 20515

Statement of the Hon. Philip R. Sharp
concerning H.R.4520
and related foreign investment information legislation
Senate Commerce Committee
Thursday, July 19, 1990

Senator Exon and Members of the Committee, thank you for allowing me an opportunity to testify before this panel today concerning legislation which seeks to improve information on foreign investment in the United States.

Such information is of increasing importance as domestic markets rush toward global integration. The foreign investment issue is of concern to many Members of Congress. Polls tell us that foreign investment in America is quite controversial among our constituents. We need to have an accurate and reliable picture of the changes taking place in our economy. We want hard numbers which substantiate the claims many economists make that foreign investment generates jobs and is good for America. As Members of Congress, we need to be able to answer the many questions and concerns of those we represent. The trouble is that the present state and organization of federal foreign investment data will not enable us to do so.

As lawmakers, we are also responsible for making complex decisions on foreign investment and its impact on American competitiveness for which we presently have inadequate and sometimes misleading information due to technical limitations of the data and the manner in which it is displayed. We want to be assured that important laws dealing with foreign investment from a national security perspective are being implemented to do what we intended: keep the government fully and currently informed of foreign investments here, and make sure that in those rare instances where a foreign investment is not in our national interest, the proper officials have all the information needed to make the right call, in accordance with laws already on the books.

The bill Reps. Lee Hamilton, Nancy Johnson and I and have introduced in the House, H.R.4520, is, like Senator Exon's bill, a bipartisan effort to make critical improvements to federal information on foreign investments. While our bill technically is not pending before this Committee, there is much common ground between it and Senator Exon's bill. If we are to enact foreign investment legislation this year -- and there is broad consensus that we should and we can -- then we should work together toward the best possible outcome. So beyond the common ground, I would like to briefly describe some interesting ideas in H.R.4520 which we believe warrant the Committee's consideration.

As those who have studied the "data sharing" exercise know, greater industry detail and accuracy can be obtained only after the exercise is fully implemented. The problem is that the fruits of this exercise, while extremely worthwhile, will take from two to three years before we begin to see the results. Fortunately, we do not have to wait that long to have better information on foreign investment.

A key provision of our bill is a requirement for an annual, "single-point reference" report from the Secretary of Commerce. As a GAO study requested by this panel's distinguished Chairman found last year, some seventeen federal agencies collect information on foreign investment. The problem is that lack of coordination between agencies and the unfortunate turf battles that sometimes arise do not bring this wealth of information together in a logical, coherent and organized presentation. The analytical report required in our bill, similar to other Commerce Department reference sources like the

Industrial Outlook, calls on the Secretary to draw together available sources from the federal government, foreign governments, and the private sector.

How else might we speed and improve data sharing results? One way is to recognize that each federal data base has its strengths and weaknesses. Senator Exon's bill would start first with employment data at the Census Bureau. This reconciliation between establishments and their respective enterprises is a critical first step before we can unearth the wealth of establishment data beyond employment -- such as capital expenditures, research and development outlays, imports and exports, and shipments. We fully agree with and support this first step. However, we should not limit ourselves to Census employment data.

The Bureau of Labor Statistics (BLS) not only has more accurate employment data, but results can be obtained much more quickly -- in about nine months as opposed to more than two years. Further, BLS has 800 occupational categories. Thus, extracting foreign-owned firms from the BLS data will provide industry- and regional-specific employment and payroll information, and will also allow us to compare with U.S.-owned firms how many production workers, managers, engineers, technicians and scientists are apportioned among total employment. Being able to make that distinction is extremely valuable, given the claims some have made that foreign owned firms typically run "screwdriver" operations in the U.S. and "hollow out" American technology. BLS data will replace anecdotes with facts.

Former Budget Director James C. Miller III authorized the BEA and BLS to share data. That authorization is still valid. We intend to codify Mr. Miller's directive in the final version of our bill, for which the House Appropriations Committee has already appropriated the small sums necessary. I urge the Committee to take a good look at this idea. Our goal should be to obtain the best results, not to allow one agency or another to maintain its monopoly.

How else could the process be improved, and at the same time give the Legislative Branch confidence in the data? We strongly believe the General Accounting Office should have the kind of statutory access to the data that allows both analyses and audits. *Such a role for the GAO is not any different than the functions which the GAO now routinely performs at other agencies and with extremely sensitive information* -- from confidential, disaggregated tax data to the most highly classified national security matters.

GAO audits and analyses should not be cast as partisan issues. Our Republican *and* Democratic co-sponsors of H.R.4520 support this provision because they recognize its importance to our institutional prerogatives and to increased confidence in the data. GAO participation also allows Committees and Members of Congress *of both parties* the ability to request studies currently unavailable on specific issues of importance to them. We explicitly recognize that it is *not* necessary for Members of Congress to have access to company-specific confidential business data to perform legislative and oversight functions. Such access could also put us in a possible conflict of interest with a foreign company's competitors. GAO analyses and audits answer our legislative concerns without risking unwarranted disclosures or conflicts.

Finally, like Senator Murkowski's bill, H.R.4520 seeks to make available this refined and improved data to the Committee on Foreign Investment in the United States, "CFIUS," to augment its reviews and investigations of foreign investments which may raise national security questions. Two recent studies, one by the GAO and a draft from the Defense Science Board Task Force, point to data inadequacies that are present when investigating foreign investment in the national security domain. Understanding that the Cabinet-level members and the small professional staff of the CFIUS are already dealing with sensitive information, like the Senator from Alaska I too find it difficult to justify their exclusion from the data on the alleged fears it may be publicly disclosed.

Our bill takes a slightly different approach than Sen. Murkowski's bill in that two types of data would be made available to the CFIUS. The first would be aggregated but industry specific; it would provide the CFIUS with a useful benchmark of the state of foreign investment in the U.S. within an industry. The second type of data is very narrow and precise: a firm voluntarily filing with the CFIUS would trigger the release of company-specific data going back three years, but only for the parties whose proposed transaction is under review. This would not allow CFIUS to look at those other company-specific files outside the transaction. This provision of our bill recognizes that the federal government has always allowed exceptions to normal government policy when national security issues are involved.

Again, Mr. Chairman and members of the Committee, I appreciate the opportunity to appear here today to discuss the foreign investment issue and pending legislation. Given the common ground shared between H.R.4520 and Senator Exon's bill, I urge the Committee to act expeditiously on a bill which incorporates the best of all our ideas.

Senator EXON. Thank you so very, very much, and we will excuse you. Just let me thank you for coming over today under a very, very busy and pressing schedule, and salute you and other leaders over there on the House side that have recognized this, as all of us have for some time. I think it can best be summed up, and I think you handled it very well this morning, that CFIUS may try to do a job, but in many instances, both on national security and in the overall trade policy, including taxation, this case where CFIUS basically has been the blind leading the blind, because it does not seem to me that they have the critical information that is necessary to make decisions in the national security and economic security interests of the United States.

We appreciate your coming over this morning. Do you have any questions, Senator Burns?

Senator BURNS. I do not. Thank you very much. I have to apologize. I got here on the tail end of your testimony. I have no questions. Thank you.

Senator EXON. Thank you, Congressman. Senator Murkowski, we really appreciate your courtesy to our friend from across the way and we are pleased to recognize you at this time.

STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you. I am very happy to be here. And let me echo some of the statements made by Congressman Sharp in his support of CFIUS. I think what we have here is a little problem making a determination of just how we can pick out the best points of some 21 bills which are before this Congress which in some way or another address the issue of foreign investment in the United States.

I think it is fair to say—I see my senior colleague from Alaska present—the concern that prompted the junior Senator from Alaska to first get into this issue is the knowledge that in his state there is foreign investment which we welcome. However, in some instances, behind that foreign investment is foreign government investment. And that is the concern of the junior Senator from Alaska because that implies the potential of unfair competition. The government, in a joint venture or working hand-in-hand with business, can provide financing at less than market rates. They can provide the underwriting necessary to carry a corporate venture into a market to the point where a competitive U.S. firm that has to produce earnings on an annual basis cannot compete. The U.S. firm cannot compete with a foreign firm that is in there to capture the market share. And these are the concerns, I think, that we should be able to address based on accurate information.

First of all, Mr. Chairman, let me thank you for inviting me to this hearing today and for holding this hearing. I think it is fair to say that we all welcome foreign investment in the United States. As a former banker, I know that money is drawn to the market. It is the way the world works. As we look at what is happening in Europe with the European Common Market, Brussels 1992, the productivity of the Pacific Rim, and the fact that the United States sits in the middle, we have got to be competitive. We welcome foreign investment. The Japanese have bought Rockefeller Center, Columbia Pictures—probably as American as ice cream. But so is rice to Japan, and we have not sold any rice to Japan.

Now I think that is an underlying theme that we should keep in mind as we address how we are going to maintain certain sensitive industries in the national security interests, and to what degree we should have information to make value judgments. And that is what this is all about.

Mr. Chairman, I have heard concern from several factors that any regulations which require further reporting, further disclosure, or any new paperwork by foreign investors would have a chilling effect on new investment. Some of the legislation before Congress requires new reporting and disclosure. I want to point out that my bill does not. And although a straight through reading of S. 856, I would hope, would put this concern to rest, I continually hear that there are worries. Therefore, I would propose an amendment which would clearly state that no requirements of any kind will be imposed upon foreign investors through my legislation, which is S. 856. It is an amendment to the International Investment in Trade and Services Survey Act to improve the quality of data on foreign investment in the United States.

Currently, the Bureau of Economic Analysis, an arm of the Department of Commerce, collects aggregate data on foreign investment. The Census Bureau, as we know, also collects disaggregated data on foreign investment. We are all well aware of the details on the difference between establishment versus enterprise level data collected by the two agencies. I am not going to spend a lot of time on that this morning. But I think S. 856 provides for better analysis of U.S. Government data by allowing the Bureau access to Census data. And I think that is where the Chairman and I differ to some extent. I know that Senator Exon agrees with me to a large degree, as his legislation provides for this as well. I understand the Administration is also in favor of this interagency cooperation. The point should simply be that we can improve our overall analysis of foreign investment in the U.S. through, I think, a simple procedure which we both agree on.

My bill also provides the Committee on Foreign Investment, known as CFIUS, access to the BEA data. CFIUS is the Presidential committee assigned the responsibility of reviewing foreign investments which may have implications for many diverse national interests. CFIUS is also given this charge under the Exon/Florio provision. As I have mentioned before, Senator Exon's and my legislation are similar, aimed at improving the quality of our data on foreign investment. While Senator Exon's bill allows for the Bureau to share Census data, it does not allow—and I think this is the major difference—CFIUS access to the Bureau data. When introducing this bill, I think the Chairman made clear that it was the Administration's position that CFIUS not be given access to BEA data. The reason given by the Administration is that confidentiality of the data may be compromised. Well, Mr. Chairman, let us look at the members of CFIUS. The Secretary of the Treasury is the chairman. Secretaries of Defense, State, Commerce, along with the Attorney General, Director of OMB, the U.S.T.R.—basically, the Cabinet.

Now let me reiterate what is the responsibility of CFIUS. CFIUS reviews foreign investments in the U.S. to see if they are a threat to our national security interests. I would ask the Committee, if we cannot trust the Cabinet members with the confidential information, then who can we trust? That is the best information from the best source, the people who have the policymaking decisions. I have offered amendment 1664 to the Chairman's legislation in order to allow CFIUS access to the data. And I think that is the point that I want to amplify very briefly as we address the realities.

Mr. Chairman, again I want to say that I have an amendment which states in clear terms that no new reporting or disclosure will be required by this bill and I ask the Committee to consider this non-controversial amendment when they reach a markup. It is my understanding that the U.S. Chamber of Commerce basically supports that language.

As you know, when CFIUS was set up in 1975 to be responsible for reviewing foreign investments which have many implications to U.S. national interests and security, the question is, "how can the system work?" It is set up, but it has to have the information flowing in, and as I have indicated, we have the members of the Cabinet that have the responsibility. But let us look at an example, the semiconductor industry. It took six years from the time the first filing was made until the section 301 ruling came down. In the meantime, we lost the industry. It simply went overseas. And the significance of that is represented by where the U.S. is today in the semiconductor industry, which was widely hailed as the leading edge of technology competitive industry, and which we continue to fight with our friends in Japan for the lead.

There was a recent article on Semi Gas Systems, a California company. I have the article which I would ask that it be put into the record by reference [1] indicating the question of whether the Semi Gas Systems, a California company which produces gas systems for semiconductor production lines, should be sold. CFIUS made a ruling last week allowing the sale to Nippon Sanso, a Japanese semiconductor firm. In this crucial ruling, to decide whether to give 40 percent, 40 percent, of the U.S. market in this technology to a Japanese firm, should not CFIUS have the information? Every piece of detailed information?

Now let us look at what CFIUS has and what they can do with it. It is very interesting, and I had a rather lengthy conversation with one of the witnesses that will be here from the Department of Commerce. They can share industry level information. In other words, if you want to know how much of the chemical industry is owned by foreign corporations, that information can be given to CFIUS. But if you want to know what individual companies, that information cannot be given to CFIUS. And the rationale is that somehow we are endangering, if you will, the confidentiality of this information.

Well, let me tell you what the French do and the Japanese do. They exchange this information and they exchange it in order to achieve an objective and that objective is the advancement of technology in a competitive world. By not being able to exchange this information, Mr. Chairman, we are simply cutting off our nose to spite ourselves in the sense that we are limiting our ability to make evaluations that affect the strategic security interests of this nation to be competitive in certain industries. And, again, at the level of the Cabinet, if that information is inappropriate, well, I do not understand the rationale of the Department of Commerce and others who suggest that somehow we are violating a confidence, that we will not get accurate reporting into the Bureau of Census by sharing this information on a detailed basis to make value judgments.

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[1] See "Financial Times", July 15, 1990.

Again, I want to make that narrow explanation as a consequence of my understanding of how CFIUS works. They will give the information on the overall industry, the chemical industry. But you cannot get it on the individual foreign chemical plants, how they are structured, how are they financed. These are the crucial things. If you have one major chemical company that is financed or joint ventured by a foreign government, it does not make a hill of beans how much information you get about the impact of foreign investment in the chemical industry. You have got to know what somebody is targeting. And if we have the information through the Bureau of Census and you cannot share it with CFIUS, what is this whole game about?

You know, I sit on the Intelligence Committee. I sit on the Foreign Relations Committee. And it is kind of interesting. We are over in Intelligence trying to determine what role we should play, if any, in having intelligence information come in to an appropriate level of our executive branch, namely the Office of the President, so that we can focus in on certain industries that are crucial. And there are industries that are crucial.

Mr. Chairman, the logic of our system and our friends in Japan, I think, deserves an examination. Every business, every industry there has a goal and a strategy to achieve the goal. Recognizing that resources are usually scarce, a successful Japanese strategic industry plan is adopted by MITI. It is coordinated, formulated, nothing is wrong with this. It is just an efficient way to do business. Therefore some markets are on a priority basis, some are considered more strategic than others. By targeting strategic markets, an infrastructure is built up which insures a solid basis for economic expansion. The leverage is not based simply on the importance of one market over another, but on the assumption that over time and with development, those strategic markets will become interrelated and independent where the whole becomes substantially larger than the sum of the individual parts. That is the Japanese system. It is the Korean system. It is the Taiwanese system. It is going to be the system in Europe when they get the Common Market together.

Like independent circles, we in the United States approach products, markets and business on separate enterprises with little emphasis on any mechanism to coordinate strategy and direction. The Japanese on the other hand, while promoting individual initiative, assume that like links in a chain, Mr. Chairman, all circles are interrelated and interdependent, and as such, feel that the coordination of strategy and direction is essential. Thus in Japan, every technology becomes a stepping stone. Every product becomes the basis for another, and the resulting efficiencies of scale are enormous, as we have seen.

You get into the technology, the relationship between the optical system of video and 35 millimeter cameras. Similarities exist in electronic packaging, circuit design, VCR recorders. We do not even make this technology. We are dependent on foreign nations for the high camera technology used in medicine, in research. Is that in the national security interest of this country?

Those decisions have to be made by policymakers, and if you cannot trust CFIUS or the cabinet I do not know who you can trust.

Go back and look again at the VCR which provided the basis for the semiconductor industry and how it was built. For example, the VCR became a huge source of demand for semiconductors. In 1987 the VCR by itself represented nearly 5 percent of the worldwide semiconductor demand and almost 12 percent of that was produced in Japan. We started it. It took us six years to move on it, six years for government to file. In the meantime, we lost the market.

Mr. Chairman, in the Intelligence Committee we are searching for the appropriate role to gather intelligence to insure the national security interest of our international competitiveness. We are not set up to do it. We do not know how to do it. We just feel if we do not do it, and the French are doing it and the Japanese are doing it, how are we going to survive in this world? It is a competitive world out there. Where is U.S. business?

Mr. Chairman, I do not know, but the logic of the Department of Commerce in suggesting that somehow you cannot trust the cabinet with this information and somehow those investors are going to be reluctant to provide the Bureau of Census the information is ridiculous. If you do filing as a foreign investor in Japan or France or many other countries, you disclose a lot. What they do with that information is their own business, and you still file.

I think charity begins at home, Mr. Chairman. That is an old western saying we have out in frontierland. We had better start with a little charity here in using all legitimate means to remain competitive. Mr. Chairman, I came from the business community. I like to be competitive. Just give me the ground rules.

You look at T. Boone Pickens today on national television. He has been in Japan 18 months, and they say he is a greenmailer. He has not yet gotten a nickel out of the thing. He cannot get on the board of directors. What kind of an incentive is that to U.S. industry to go over to Japan and participate in the Japanese business society with that kind of a welcome? U.S. firms are not going to be standing in line. We have over 40 Japanese nationals who are directors of U.S. corporations, and we do not think a thing about it. It is great; we welcome it. Let us play on an equal ground. I think that is why it is so important, Mr. Chairman, for you and your committee to sort out in this process of the 21 or 22 bills that are floating around here how we can best get accurate information and use it for competitiveness.

Do not think that the Japanese or other folks are going to be offended. I have done business, and I have the highest respect for them. If you are weak, they will roll you because that is the way the business community works; but if you are strong and consistent, they will respect you. I think we need more respect.

Mr. Chairman, I could go on but I think I have tied up enough of your time. I would be happy to respond to any specific questions. Again, the major point this Senator from Alaska wants to make is that the top executive branch of government should have the opportunity to have this information by company as opposed to just by industry if it is going to be at all meaningful because that is how the process starts. If you have that company in bed with a foreign government to get a market share or a market penetration or to receive favorable financing, that whole industry is not reflected in that one individual participant, but you had better be able to pick out that participant and decide whether you want to put a stop or put some shirttails or conditions on that type of investment.

Again, this Senator from Alaska welcomes foreign investment, but he is very, very concerned about foreign government investment hand in hand with foreign private investment. Thank you, Mr. Chairman.

Senator Exon. Senator Murkowski, thank you very much. I just want to say that I appreciated your leadership and input on this whole matter of foreign investment, and I salute you for your very articulate statement this morning. It was very forcefully delivered, and we will take it under full consideration as we move forward on this bill.

Your senior colleague had to return to chair another committee. He advised me that I should say that he will be introducing your proposal as we continue and go to markup on this proposal. We will take it under full consideration. I thought you made some awfully good points this morning.

Let me just say that I think one of the problems that we have in America today and have had for some time is that while other nations, as you have outlined this morning, have definite policies for advancing their technology, I think we are lacking that in the United States. I do not know that we have any goals or certainly any specific plans to do that. We monopolized in most of these areas for so long we have taken it for granted that in most areas we do not have monopoly anymore. What we do have seems to be given away all too frequently.

With regard to the bill before us, I introduced this bill at the request of the administration, and Congressman Lent did the same over on the House side. So we are basically moving the administration's bill that has become known as the Lent-Exon bill. Certainly I will be talking and hope we will have testimony today from the administration on whether or not they think we should be going as far in the bill that they have sponsored, that they suggested at least.

I think you made some excellent points, and we will give full consideration to this.

It does seem to me, and do you agree, that CFIUS had the authority under subpoena power on the specific issue or specific company to go in and get the information. Now that may not be as convenient as the more liberal collecting and dispensing of the information that your proposition seems to suggest, but is it not true that CFIUS does have some subpoena authority that they could use if they so wanted?

Senator MURKOWSKI. I personally had a discussion with your witness from Commerce yesterday, and we went into this in great detail. It is my understanding that they cannot get the individual company information.

I do not know whether the staff back there is nodding this way or that. I hope they are nodding up and down. I would hope that you would ask the witness from the Department of Commerce that question as well. They cannot get the individual information, but they can get the industry information, compiled information.

Senator EXON. Which gross statistics provide very little help when you are trying to decide an individual proposition.

Senator MURKOWSKI. I could not agree with the chairman more. You know, Mr. Chairman, if you want to make a judgment, you want all the information that you can get. When you say all, you want the best. If you are looking at an industry trend, what is one company trying to do? Is one company in bed with a Japanese or a Korean or a Taiwanese or an Italian or whatever? Is that government in bed with that foreign investor? If it is, it makes a difference. It is unfair.

If it is in an industry that is in the national security interest of our Nation to be competitive as far as high technology, you had better know it. I just do not buy their excuse that somehow you are compromising the ability of foreign participants to give accurate information to the Bureau of Census if this information is shared by CFIUS on a company-by-company basis. That is just where we philosophically differ.

I know, Mr. Chairman, you and I have differed with the administration from time to time and we have both carried their water, but I think the bucket is full of holes on this one.

Senator EXON. I think we are going to check this out a little further and maybe we can get into this a little more with the people who work with this proposition daily, but it is my understanding that CFIUS can by subpoena get the information that they think they need in an issue that is before CFIUS. Whatever we must do, we must do more than what we do now. I think maybe I have talked to my friend from Alaska about this from time to time.

When you used the term "chilling" in your presentation, I remembered back to the early days of Exon-Florio. I hope all in the room understand that Exon-Florio was simply a provision to provide the President with the tools if he wanted to use them to stop the takeover by any foreigner of an American company or corporation where the national security interest of the United States would be adversely affected.

I remember so well that an individual in a high position in the Treasury Department came over and sat down in my office and said, Senator, do you not realize that if Exon-Florio becomes law that this will have a "chilling effect" on foreign investment in America? I said, yes, exactly, with regard to national security.

I think it jumps over into the whole matter of economic security interest, too, that I know you in the Intelligence Committee are working on, and we are very interested and salute you for doing that.

Senator **Murkowski**. I think you and I think very much alike. Foreign investment comes with the highest return and the least risk, and it can go all over the world. It comes to the United States because it is a good investment with a good return and we welcome it. We want to have an equal playing ground, however, and we want to make sure that we can be competitive in our own market.

It is kind of interesting, Mr. Chairman, to note that currently the Japanese are doing exactly $2.8 billion worth of construction in the United States, and that is great. They are competitive, they bring Japanese capital, they bring architects, engineers, designers. They do not bring labor. We are doing $200 million worth of construction in Japan. It took us two years to get a license. Now we can get one in six months. But it is not because the door is open. It is because we are systematically striving to be competitive in their market as they are in ours.

The thing that was so surprising to me is their construction market is about $470 billion in U.S. dollars and ours is about $430 billion. So do not tell me there is no market potential for U.S. contractors and architects and engineers in Japan. There is. As we welcome them into our markets, however, our competitive domestic firms have a shrinking market if they cannot go over and offset and participate in the Japanese market.

So that is where we are coming from. You know, when we ask about CFIUS and the reporting, you have to ask, I think, our friend from Commerce how could CFIUS know what to ask for if they cannot get the information until the investigation is under way. It is a chicken-and-egg deal.

Senator **Exon**. I understand what you are saying. The Lent-Exon bill as advanced by the Administration is a step in the right direction but it is too small a step, and you think the step should be bigger than the one proposed.

Senator **Murkowski**. Unfortunately, a lot of the people in Government never had to meet a payroll and do not know how, and they are diplomats and that is where they belong. They do not belong in business. If you have to make a buck, that is what you have to do. You have to do it under the laws, but if it cannot be competitive, if it cannot be fair, and if you cannot have a level playing field, why, you appeal to Government to do something about it.

Now, I do not dispute the logic of commerce by saying their concern is to have accurate information coming in to Census, but I think you have a higher cause here, and the higher cause is U.S. competitiveness in strategic markets, and if you have that information coming to the Cabinet, I do not feel uncomfortable. I am not going to lose any sleep about their inability to handle it.

If you cannot trust the Cabinet, who can you trust, and to suggest well, if they ask for information they can get it—hey, that is very naive in the sense of trying to maintain what the bottom line is, and that is international competitiveness in strategic areas where we want the technology. Where would we be today in our balance of payments if we did not have the technology of our jet commercial aircraft industry, which was underwritten partly by the Department of Defense?

The Japanese would love to have that position, and they are working to get it. Do not forget it. We all know that, but we have got to maintain competitiveness, and if we lose the ability to have certain component parts of that technology, and we have to depend on other nations for it, we are going to have to buy it from them.

One of the statements that I made I should give credit to a gentlemen by the name of Richard Elkis, who I have quoted a portion of as far as the step-by-step in the chain link that some of the nations propound as their objective, and we I think should maintain the realization that to be competitive we have to have a plan, and that plan has to have the support of Government.

We have to have a concerned Government that has got its listening devices out there to ensure that our domestic strategic technology is not thwarted, and I am just suggesting, Mr. Chairman, that the way to do it is to have the best and the most accurate information at the appropriate levels where this information can come not just at the request of CFIUS in the sense of, if somebody in the Cabinet happens to ask for it, but there has got to be something in the Executive Office that says, we are interested in international competitiveness, and we are sensitive to it, and if CFIUS has got the information, well, we want to review it in the process.

As it sits now, it sits over in the Bureau of Economic Analysis, and it sits over at Census, and that is where it sits unless somebody asks for it, and under my understanding, you can only ask for it by industry. I just think there is a better way, Mr. Chairman.

I have gone on much too long. Thanks for your patience.

Senator EXON. Thank you, Senator. I would also mention, while we are talking about the balance of the trade, where in the world would we be without agriculture? We would be in much, much deeper trouble than we are right now. Thank you for your testimony.

Senator Burns.

OPENING STATEMENT BY SENATOR BURNS

Senator BURNS. Thank you, Mr. Chairman.

I appreciate Senator Murkowski's testimony here this morning, and I have often felt on this subject that in order to formulate policy, which we are asked to do in this Government, and to sort of play the competitive game in a worldwide economy, we cannot formulate policy with only half the rule-book.

So the extension of this is, I see no reason why we deal with foreign governments differently than we deal with an individual foreign investor. Our antitrust legislation, our laws that are on the books, deal with it differently, and if we do not know, and even we at the policymaking level, do not have that information, we cannot make a good call.

Now, I know we are going to have a hue and cry go up here that says well, for the sake of business we cannot allow everybody in the world to know who are the principals involved in an industry. Well, if they do not want to do business on top of the table, I do not think they should be allowed to do business at all.

So I think in order to formulate a policy that serves our national interest, I am like Senator Murkowski. It is time that we took a look at business, and I will tell you if the 101st Congress goes down, when it closes out this year, we will have done more to cripple the competitive edge of American business than any other Congress that I have been able to look at and to decipher on my short stay here.

We have got to have the information if we are asked to make good solid policy judgments, and so I want to associate myself with the words of Senator Murkowski and look forward to hearing from the rest of the witnesses, and I thank you for your time this morning.

Senator MURKOWSKI. If I could cite one more example, having been a commercial banker for 25 years, I have often followed what international banking is all about. It is kind of interesting, in Japan, the Minister of Finance Banking in Japan sits down with the chairmen of the leading banks and basically sets the price of money, what they will pay for money and at what rate they will lend money out.

Now, if Nick Brady did that as Secretary of the Treasury we would throw him in jail, because we have anticompetitive laws. That is neither here nor there. That is just their system. I appreciate it. It is their business. But the Japanese banks have 25 percent of California's banking system—Japanese domiciled chartered banks. We do not have one U.S. bank chartered in Japan. We have branches that are allowed certain services over there. So it is not a level playing field.

Now, my point is, if I had Secretary Brady as a member of CFIUS, if I asked him to check into this problem, Secretary Brady is not going to be allowed to have access to all of the available information of the individual banks, if it is Sumitomo Bank, which just recently underwrote here in Washington, DC the loan on the National Press Club from the Bank of America, and they did it at a lower rate and they asked for a compensating balance—and I tell you, that is how the banks get bigger and that is why the Japanese have got nine out of the ten major banks in the world.

There is nothing wrong with that. That is great. But let us compete over there. The fact that the Secretary cannot get the information on the individual banks but he can get it on the Japanese investment banking in the U.S., that is the problem, Mr. Chairman.

I agree, finally, on agriculture. The difference between you and I is our agriculture is from the sea and yours is from the land. But let us look and remember, we talk a lot around here about the deficit balance of payments, which is what, $120 billion or something? How is it made up? Approximately $50 billion of it is Japan, the other $50 billion is oil imports, and the other $20 billion is incidental.

So let us keep focusing on where the ball really is, and it is on international competitiveness.

Senator EXON. Senator, thank you very much.

I would like to place in the record by reference a very interesting and revealing story along the lines that we have been talking about, from "The Washington Post" of July 17, 1990 and the headline is, "Government Panel Backs Sale of Semi Gas to Japanese Firm." The first paragraph says, "A high level Government panel"—in this case it was CFIUS—"has given its blessing to the controversial sale of a silicon valley technology company to a Japanese firm, industry and Government sources said yesterday." It goes into the whole matter of semiconductors and the fact that we are no longer very competitive in this matter, and I think that this news story indicates the concern that many of us have, and whether or not even the laws that we currently have on the books, including Exon/Florio, are being properly considered by the Administration.

Senator Murkowski, thank you very much for being here again this morning, and we will give your measure every consideration as we proceed to mark up on the matter before us.

Senator MURKOWSKI. Thank you. In the article I referred to, the realization that many U.S. firms object very much to this transfer of semi-gas, because they see it as having 40 percent of the market in the U.S. being transferred. National security is at stake in this regard.

Senator EXON. Thank you, Senator. I would like to have panel number one please come forward: Mr. Michael Darby, Under Secretary for Economic Affairs of the Department of Commerce and Mr. Bill Barreda, Deputy Assistant Secretary for Trade and Investment Policy in the Department of the Treasury.

I will first recognize Mr. Michael Darby.

STATEMENT OF MICHAEL DARBY, UNDER SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE

Mr. DARBY. Thank you. I appreciate the opportunity to testify today on proposals to improve data on foreign direct investment in the United States.

The Commerce Department's Bureau of Economic Analysis collects data on foreign direct investment in the United States to provide comprehensive and reliable information needed to monitor, assess the impact of, and develop important, informed U.S. policy on such investment.

Growing concern over the size and rapid growth of foreign investment in the United States has led some individuals and groups to believe that increased monitoring or added restrictions on foreign investment are now necessary. The sentiments expressed by the public and in the popular press are often in direct contrast with existing empirical evidence and the opinions of most economists, as well as the opinions of many members of this body.

For example, although U.S. policy has been derided in the press for allowing the Japanese and others to buy up America, in fact, total foreign capital inflows were less than 4 percent of GNP in 1989, of which only one-third was direct investment.

Mr. Chairman, as extensive as the U.S. foreign investment data collection efforts already are, it has generally been conceded that room exists for improvement, principally with regard to the level of industrial detail of foreign direct investment data published by the BEA. We are very pleased that you, Mr. Chairman, Senator Murkowski, and Representatives Lent, Sharp, Hamilton, and Johnson have all taken such an active interest in helping us to provide better data.

S. 2516, an Administration-supported bill, introduced by you, and the House version introduced by Congressman Lent, provides an excellent opportunity to make the needed improvements in foreign investment data collected by BEA. By permitting the Census Bureau to share its highly detailed Standard Statistical Establishment List and related data with the BEA, S. 2516 would enable the Economics and Statistics Administration to publish vastly more detailed industrial and regional breakdowns and analyses of the operations of U.S. affiliates of foreign companies. This bill permits the sharing of the Establishment List strictly within these two major parts of the Economics and Statistics Administration, which I head.

S. 2516 would also result in higher quality statistics on foreign direct investment by enabling the BEA to verify through access to Census Bureau Establishment Lists that it is collecting complete and accurate information from all foreign-owned U.S. affiliates. This will provide a better understanding of the role that foreign investment plays in the American economy, and facilitate research on the operations of U.S. affiliates by academic and policy analysts with a variety of viewpoints.

Other legislative proposals would permit access by CFIUS or GAO, or both, to individual reports on foreign investment. The Administration has consistently opposed any proposals which would undermine the confidentiality of foreign investors and the integrity of the direct investment data collection system. By reducing the confidentiality of foreign investors through widespread dissemination of individual investor data, these proposals would discourage foreign investment.

Enactment of these proposals could reduce foreign investment. Less foreign investment could, in turn, ultimately increase the cost of capital in the United States, result in slower economic growth, weaker productivity, lower rates of employment, and American products which are less competitive in world markets.

In addition to the serious consequences which these proposals would have on U.S. investment, it would also damage our statistical system. Our statistical system is based on confidentiality of reported responses. We do not disclose the individual identities of people or firms who respond to survey questionnaires distributed and collected either by the BEA or the Census Bureau. Confidentiality assures companies that their competitors will not gain unfair advantage by having access to the data, and that the data are gathered solely for statistical and analytical purposes, not investigative or regulatory purposes.

My colleague, Mr. Barreda, will explain that there is no gain in information for CFIUS to offset their loss of accurate data on the industry level if CFIUS was permitted access. Thus, if you agree that CFIUS plays an important national security purpose, Senator Murkowski's amendment would compromise that purpose.

Mr. Chairman, we share your objectives and those of Senator Murkowski and Representatives Lent, Sharp, Hamilton, and Johnson of publishing higher quality and more disaggregated data at the state and industry level. We do, however, believe that debates on the broader issues of an open investment policy and the role of CFIUS should be addressed at another time and place. We believe that the vastly improved data under S. 2516, your bill, would result in more informed discussions of these broader issues.

Certainly, the Nation would benefit from having the necessary information to make policy wisely. Linking the BEA and Census data sets has been discussed now for some five years, but we still need S. 2516 to do it. I would hope that we do not have to wait another five years to go forward. Passage of S. 2516, the Exon-Lent bill, will permit a vast increase in information on foreign direct investment in the near future.

Thank you, Mr. Chairman. I am prepared to respond to any questions the Committee might have.

[The statement and questions and answers follow:]

Testimony of Michael R. Darby
Under Secretary for Economic Affairs
Administrator, Economics and Statistics Administration
U.S. Department of Commerce

Before the

Senate Committee
on
Commerce, Science, and Transportation

July 19, 1990

Mr. Chairman, I appreciate the opportunity to testify today on proposals to improve data on foreign direct investment in the United States. I would like to summarize briefly current reporting requirements and recent trends in foreign investment, as well as the impact foreign investment has on the United States. I will also discuss U.S. Government monitoring procedures for foreign investment and proposals to improve data and monitoring procedures.

Current Reporting Requirements

International data on foreign direct investment are currently collected by the United States under authority of the International Investment and Trade in Services Survey Act. Under the terms of this Act, foreign firms operating in the United States report financial and operating data, as well as balance of payments data, to the Commerce Department's Bureau of Economic Analysis (BEA).

The purpose of BEA's data collection system for foreign direct investment (FDI) in the United States is to provide comprehensive and reliable information needed to monitor, assess the impact of, and develop informed U.S. policy on such investment.

BEA's data provide a wealth of information on FDI. They give a detailed picture of the levels, growth, origin, and regional and industrial distribution of the investment. In terms of the quantity, quality, variety, and timeliness of the aggregate statistics it produces, the BEA data system is unmatched by that of any other country in the world.

Recent Trends in Foreign Direct Investment in the United States

At the end of 1989, the foreign direct investment position in the United States had a book value of approximately $400 billion; it was less than $35 billion at the end of 1977 and has grown rapidly at an average annual rate of just over 22 percent since 1977. In terms of the approximately $2 trillion in total foreign investment in the United States, foreign direct investment represents a relatively small share.

Unfortunately, growing concern over the size and rapid growth of foreign investment in the United States has led some individuals and groups to believe that increased monitoring, or added restrictions on foreign investment are now necessary.

A rash of recent and well publicized Japanese acquisitions of highprofile U.S. assets -- Columbia Pictures by Sony, and New York's Rockefeller Center by Mitsubishi, for example -- has also accentuated existing apprehensions held by the public regarding foreign investment.

However, the sentiments expressed by the public and in the popular press are often in direct contrast with existing empirical evidence and the opinions of most economists -- as well as the opinions of many members of this body. For example, although U.S. policy has been derided in the press for allowing the Japanese and others to "buy up" America, in fact, total foreign capital inflows were less than 4 percent of GNP in 1989, of which only one-third was direct investment.

Allegations that foreign firms pay lower wages and expend less on capital investment and R&D than domestic U.S. firms have also been popular notions appearing in the press. Recent empirical evidence suggests, however, that overall average wage rates and R&D expenditures of U.S. affiliates of foreign companies show no discernable difference from the wage rates and R&D expenditures of domestic U.S. firms.

The Benefits of An Open Investment Policy

Previously, I stated that it was unfortunate that the recent growth in foreign direct investment has prompted concerns that foreign investment must somehow be more closely monitored and restricted. This sentiment is unfortunate because initiatives that dampen foreign investment do a great disservice to all economies.

Foreign investment in our economy has had two important effects. First, it adds to the pool of capital available to increase capacity and modernize our industrial base, which in turn raises productivity. Increasing productivity and product quality makes us more competitive in world markets.

Second, foreign direct investment provides employment. As President Bush recently told a news conference, "I welcome Japanese investment in this country. You know why? Jobs. American jobs." In promoting economic growth, investment contributes to the growth in our real wages and to growth in our standard of living. This is the principal objective of our economic policy.

Because of the concrete economic benefits foreign direct investment provides, our investment policy has been, and continues to be, unambiguous. The United States welcomes foreign direct investment.

National Security

As you know, the Exon-Florio Amendment, attached to the Omnibus Trade and Competitiveness Act provides an exception to the U.S.

policy towards foreign investment. This provision grants the President authority to restrict takeovers and acquisitions of domestic firms by foreign companies on national security grounds.

The President delegated to the Committee on Foreign Investment in the United States (CFIUS) his power to investigate. Since August of 1988, this committee has received notifications of about 375 transactions, of which the President has disallowed just one -- requiring a Chinese firm to disinvest its interest in Mamco Manufacturing Co., a Seattle-based aircraft parts manufacturer.

The Exon-Florio provision has caused many commentators to express concern that the provision represents a step back from our open investment policy. However, these fears have proven false. We will continue to implement the Exon-Florio provision in full accord with its spirit and intent. But this will be done in the context of a continued commitment to an open investment policy.

Proposals to Improve Foreign Investment Data

Mr. Chairman, as extensive as the U.S. foreign investment data collection efforts already are, it has generally been conceded that room exists for improvement -- principally with regard to the level of industrial detail of foreign direct investment data published by the BEA. S.2516, an Administration bill introduced by Senator Exon, provides an excellent opportunity to make these needed improvements in the foreign investment data collected by BEA.

S.2516, by permitting the Census Bureau to share its highly detailed Standard Statistical Establishment List (SSEL) and related data with the BEA, would enable the BEA to publish significantly more detailed industrial and regional breakdowns and analyses of the operations of U.S. affiliates of foreign companies. This bill permits sharing of the establishment list strictly within these two major parts of the Economics and Statistics Administration (ESA) which I head. By eliminating the need for BEA to collect establishment data which have already been collected by the Census Bureau, data permitted by this bill would also avoid the duplication of collected data, and would help to reduce the reporting burden on the business community, and avoid the need to raise the operating costs of the U.S. Government.

S.2516 would also result in higher-quality statistics on foreign direct investment by enabling the BEA to verify, through access to the Census Bureau establishment list, that it is collecting complete and accurate information from all foreign-owned U.S. affiliates. This will provide a better understanding of the role that foreign investment plays in the American economy, and facilitate research on the operations of U.S. affiliates.

More importantly, S.2516 would preserve the confidentiality of all business-sensitive information that U.S. affiliates of foreign investors provide to the BEA and the Census Bureau. Confidentiality of respondent data is a fundamental tenet of all U.S. Government statistical data collection efforts, and is key to the maintenance of quality statistics. Because it keeps foreign investor responses confidential and limits their uses to clearly statistical purposes, S.2516 would not discourage foreign direct investment in the United States, and is therefore wholly consistent with U.S. investment policy. For these reasons, this bill is supported by the Administration, and has the strong backing of the business community, as well.

In regard to Congressman Sharp's bill, H.R. 4520, this Administration has consistently opposed any proposals which would undermine the confidentiality of foreign investors and the integrity of the direct investment data collection system.

By reducing the confidentiality of foreign investors through widespread dissemination of individual investor data, H.R. 4520 would discourage foreign investment. Enactment of this proposal could have a chilling effect on foreign investment. Less foreign investment could, in turn, ultimately increase the cost of capital in the United States, and result in slower economic growth, weaker productivity, lower rates of employment, and American products which are less competitive in world markets.

In addition to the serious consequences which this proposal would have on U.S. investment, it would also damage our statistical system. Our statistical system is based on the confidentiality of reported responses. We do not disclose the individual identities of people or firms who respond to survey questionnaires distributed and collected by either the BEA or the Census Bureau. Confidentiality assures companies that their competitors will not gain unfair advantage by having access to the data, and that the data are gathered solely for statistical and analytical purposes, not for investigative or regulatory purposes.

We are concerned that by disseminating information on individuals under this proposal, we will subsequently have greater difficulty collecting statistical data that we need for both government and private use. Furthermore, public disclosure may lead to strategic behavior on the part of respondents -- in that they may distort answers or provide less than full answers, or not respond. This would further aggravate respondent compliance problems which already exist, and the quality of Federal statistical data will suffer.

With respect to the sharing of data with CFIUS, the Administration is strongly opposed. Protecting the confidentiality of data becomes extremely difficult the more widely the data are disseminated. The data collected by BEA and the Census Bureau are collected for statistical purposes only. Giving CFIUS, or any other agency with an investigatory or regulatory purpose, access to individual investor data would set a precedent of nonstatistical use that would erode the integrity of our statistical system.

If foreign-owned companies believe the information they provide will be used against them, they will be less inclined to respond to questionnaires. And if they do respond, they will be less inclined to provide fully accurate information.

Essentially, there is no clear or compelling reason to provide the eight member agencies of the CFIUS access to individual foreign investor data. CFIUS currently has the authority to request the data it requires to safeguard national security under Exon-Florio. Moreover, CFIUS contends it does not need the data, and CFIUS agencies oppose this provision.

Sections 4 and 8 of H.R. 4520 would allow access to individual business and establishment level data by the General Accounting Office. Again, this Administration has strong reservations concerning the access to confidential investor data by nonstatistical agencies and for purposes other than clearly statistical reporting.

Specific legislation authorizing increased access to confidential data would only serve to reduce foreign investor confidentiality. And this is exactly the result we do not want. If foreign-owned companies believe that the information they provide could ultimately be used in a regulatory process -- that is when they will begin to color or limit their questionnaire responses. Essentially, H.R 4520 would provide an incentive to foreign-owned companies not to report fully and honestly and would do so at a time when the reports are needed most.

Mr. Chairman, I have repeatedly heard people express unfounded fears that their decennial census responses would be shared with the Immigration and Naturalization Service or the Internal Revenue Service. Some members of this body have expressed alarm that such fears could distort the data for their districts. The case is the same here: If we are to have good data available to guide government policy, we must assure respondents absolutely that the data will be used only for statistical purposes.

In response to concerns about the timeliness of foreign direct investment data, let me just say that the Administration also shares these concerns. In fact, the President has recently approved a multi-year initiative to improve, among other things, the timeliness of all Federal economic statistics. Moreover, in the pending FY 1991 budget, the President has requested almost $2.4 million dollars for the improvement of the international statistical reporting efforts of the BEA. Of that amount, approximately two-thirds is for the BEA-Census data link project. A substantial portion will also be used to implement an innovative interactive computerized editing system and to publish the results of BEA's survey of new foreign direct investments every six months instead of once a year. This system will make it possible for BEA to process and report the direct investment survey data more quickly and efficiently.

Concerns have also been raised about the extent of data that will be shared within the ESA under the BEA-Census link project. Presently, the Census Bureau and the BEA and I have approved a Memorandum of Agreement (MOA) on the information that is to be shared initially for the link project. It should be noted that the memorandum specifically allows for the possibility of adding further data items to the list in the future. Moreover, as specified under provisions of the Exon bill and the existing MOA, no further legislation would be required in order to add to the list of data items that could be shared to improve future foreign investment reports. The Census Bureau will share all data necessary to augment and improve the quality of foreign investment data currently reported by the BEA.

Mr. Chairman, we share the objectives of Senators Exon and Murkowski, and Representatives Lent, Sharp, Hamilton and Johnson of publishing higher quality and more disaggregated data at the State and industry level. A better understanding of how our economy functions should be the consequence. Better decisions -- private and public -- should be the payoff. We look forward to working with members of this committee in achieving those ends.

However, we feel strongly that the dissemination of foreign investor data should be limited to only that which is necessary for the BEA to publish quality foreign investment statistics. Implementation of S.2516 would provide highly detailed foreign investment statistics, while maintaining the integrity of our statistical collection efforts. Moreover, Senator Exon's bill does not discourage foreign investment, and will not adversely affect the U.S. economy, nor will it invite retaliation against U.S. firms operating abroad. S.2516, in conjunction with the President's Statistical Initiative, affords us the opportunity to provide comprehensive and timely, high-quality foreign direct investment statistics, while maintaining current U.S. foreign investment policy.

Thank you, Mr. Chairman. I am prepared to respond to any questions the Committee may have.

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for Economic Affairs
Washington, D.C. 20230

August 3, 1990

Honorable Ernest F. Hollings
Chairman, Committee on Commerce,
Science, and Transportation
United States Senate
Washington, DC 20510-6125

Dear Mr. Chairman:

I am pleased to send the answers to your questions and the question of Senator Exon following up on the Commerce Committee's hearing on July 19 regarding Federal collection of information on foreign investment in the United States.

If you or other Committee members need additional information, please let me know.

Sincerely,

Mark W. Plant for

MICHAEL DARBY
Under Secretary
for Economic Affairs

1. If S. 2516 is enacted, how long will the merging of data take?

A. BEA and Census estimate that, once legislative authority to share the data has been obtained and resources for the project are in place, it would take about 1 year to perform the link and publish the first results. Thus, assuming legislative authority were obtained and resources in place by December 1990, first results could be published in December 1991.

These first results would be based on linked data from the most recent benchmark survey, or census, of each agency--that is, BEA's 1987 Benchmark Survey of Foreign Direct Investment in the United States and the Census Bureau's 1987 Economic Censuses. The initial publication will present detailed data for employment by State and by industry at the lowest level of disaggregation available from Census, subject to confidentiality requirements that data for individual companies not be disclosed. Subsequently, it is anticipated that the project would be extended to cover other data items--such as sales or payroll--and other years.

2. The 1987 Benchmark Survey will be published in September 1989. Have we been making any progress on getting this data out more quickly?

A. The preliminary results of the 1987 benchmark survey were published in July (not September) 1989, 13 months after the May 31, 1988, due date of the reports and in about one-half the time required to publish the results of the last (1980) benchmark survey. (See "U.S. Affiliates of Foreign Companies: 1987 Benchmark Survey Results," in the July 1989 issue of the Survey of Current Business, the monthly publication of the Bureau of Economic Analysis (BEA).) Revised data from the benchmark survey, and preliminary results of BEA's 1988 annual survey of foreign direct investment, will appear in the July 1990 Survey.

It should be noted that further efforts to publish the benchmark survey results more quickly may have only limited impact. Respondents oppose due dates earlier than May 31, because of the need to close their books on the previous year and to file regulatory Government report forms, such as tax forms, first. BEA needs time after the due dates to edit reports and, because respondents often fail to file on time or file erroneous reports, to follow up on late filers and to correct erroneous reports. In this regard, it should be noted that lack of timely response by reporters has become an increasingly serious problem for BEA in recent years. Companies have indicated that part of their slowness is because the resources they can devote to completing Government surveys have declined.

3. In 1989, receipts on investments abroad were less than payments on investments here. CRS has projected that this gap could widen in the next few years. Is this of concern to you?

A. A major incentive for foreigners to invest in the United States is the expectation that those investments will provide them with a return. Payments of income to foreign direct investors should not be a serious concern because, as long as the associated investments help to raise productivity, employment, and national income, they can be accomodated along with a rise in U.S. living standards. Such payments of income are a small price to pay compared with the benefits that foreign investments provide to the U.S. economy.

As I noted in my testimony, foreign investment has had two important effects on the economy. First, it has added to the pool of capital available to increase capacity and modernize our industrial base, which in turn raises productivity. Increasing productivity and product quality makes us more competitive in world markets. Second, foreign direct investment provides employment. In promoting economic growth, investment contributes to the growth in our real wages and in our standard of living. This is the principal objective of our economic policy.

4. Do you believe that the data-sharing contemplated under S. 2516 will result in more information being made available on critical sectors like biotechnology, aerospace and semiconductors?

A. Yes. The data-sharing contemplated in S. 2516 will make available the Census Bureau's detailed establishment- or plant-level data for foreign-owned U.S. companies that report to the Bureau of Economic Analysis. Within the limits of confidentiality, the data will be published at the most detailed industry level collected by the Census Bureau, which, for most industries is at the three- or four-digit level of the Standard Industrial Classification System. This will increase the maximum number of industries that might be shown from the 135 now available from the BEA data alone to approximately 800. The resulting information will provide better measures of the full range of activities, rather than only the primary activities, of foreign-owned U.S. business enterprises.

5. In a report done by GAO for this Committee last year, GAO found that some seventeen agencies collect information on foreign investment. Is there some way this data-gathering could be coordinated for increased efficiency and to reduce the burden on business?

A. Although a number of agencies collect data on foreign direct investment in the United States, the Commerce Department's Bureau of Economic Analysis (BEA) is the primary agency collecting such data. The BEA data provide an extensive and consistent picture of the levels, growth, origin, and regional and industrial distribution of the investment. As I noted in my testimony, in terms of the quantity, quality, variety, and timeliness of the aggregate statistics it produces, the BEA data system is unmatched by that of any other country in the world.

In contrast, the data collection efforts of other Federal agencies in this area are narrower in scope and purpose than those of BEA. Usually the information is collected only as part of the other agencies' broader program responsibilities. Unlike BEA, these agencies may not collect information specifically to monitor or analyze foreign direct investment. The underlying concepts and definitions used by a given agency will conform to those required by the agency's particular mission or legislative mandate, but may differ from those used by other agencies with differing missions or from those used by BEA specifically to monitor direct investment. Thus, while some of the information collected by other agencies can usefully supplement the aggregate data on foreign direct investment published by BEA, and although the coordination of the data-gathering activities among agencies could perhaps be improved, complete coordination and comparability would be difficult to achieve given the differing missions and data needs of the agencies involved.

6. Congressman Sharp made the point in his testimony that while S. 2516 would allow sharing of employment data between Census and BEA, the Bureau of Labor Statistics has more accurate and timely data on employment. Should BEA be sharing data with BLS?

A. Because of the structure and variety of establishment-level data available at Census, a BEA-Census link holds the best opportunity for deriving accurate and useful establishment-level data for foreign direct investment in the United States. A BEA-BLS link would have a narrower focus (on employment and wages only) and the structure of BLS data would make a successful link very difficult.

Unlike Census, BLS does not routinely collect data that allow all of the various establishments of a single enterprise to be tied together. Because BEA data are for enterprises, the absence of such information precludes resolving any mismatches between BEA and BLS data. Also, BLS data are collected and organized by State, and access to the data would require a separate agreement on sharing with each State. Thus, a BEA-BLS link would have to be done State by State, rather than for the United States as a whole, limiting the analytical usefulness of the results unless and until a link was conducted for each and every State.

A limited test match between BLS establishment data on employment and wages and BEA enterprise data on foreign direct investment was conducted for several States in a joint feasibility study several years ago. While the preliminary results indicated that a rough match might be feasible, the inability to correct for mismatches and the need to proceed on a State-by-State basis were major limitations to extending the work.

The match between BEA and Census first will provide information, at the establishment level, on employment, but it is anticipated that the project will be extended to cover a variety of other measures collected by Census, such as sales, payroll, and spending for plant and equipment. Because Census has data for both establishments and enterprises, and information on company structure that links establishments to a given enterprise, it will be possible in the BEA-Census link to identify and investigate mismatches between BEA and Census data. This is essential to insuring the quality of the results of the link project.

Clearly, initial development of establishment-level data for foreign direct investment in the United States is best attempted through a BEA-Census link. Once that work is well underway, useful extensions, including possible sharing of data between BEA and BLS, can be considered.

Question from Senator Exon

1. In what shape is the overall statistical ability of the U.S. Government? Did the statistical operations of the U.S. Government receive appropriate attention in the 1980s? What can be done to improve statistical accuracy? Are you concerned about the reaction of financial markets to preliminary statistical reports?

A. The statistics produced by the U.S. Government are sound, but our statistical system is stressed. The President's initiative is addressing the deficiencies which are largely the result of the rate of changes in the economy outstripping the ability of the statistical system to keep up with them. Preliminary statistical reports are issued by the government, with fully articulated caveats concerning their likelihood of later revision. These reports are issued because users, to whom we are ultimately responsible, want them. They represent the most accurate estimates available at the time of their release. We are always concerned when they are misinterpreted, or used improperly, and we continually educate users with respect to the limitations of the data we release.

Senator Exon. Thank you, Mr. Darby. We will hold questions until we hear from the other witness on this panel.

Mr. Barreda, I am very happy to have you here this morning, and recognize you at this time.

STATEMENT OF WILLIAM E. BARREDA, DEPUTY ASSISTANT SECRETARY FOR TRADE AND INVESTMENT POLICY, DEPARTMENT OF THE TREASURY

Mr. **Barreda**. Thank you very much, Mr. Chairman.

We appreciate the opportunity to present the views of the Treasury on data collection and foreign direct investment. I might also say we are very appreciative of your kind words on the administration of the Exon-Florio provision by Treasury and CFIUS.

First, Mr. Chairman, I would like to state that Treasury supports the bill you introduced, the Exon-Lent bill. We agree it would be desirable for BEA and Census to share the data for the reasons described by Under Secretary Darby.

The second item I would like to address is whether CFIUS, the Committee on Foreign Investment in the United States, which Treasury chairs, should have access to the disaggregated BEA and Census data in order to carry out its responsibilities to implement Exon-Florio's provisions of U.S. law.

Senator Murkowski and Congressman Sharp have raised this issue quite forcefully this morning.

We have concluded that CFIUS should not be given the disaggregated data of BEA and Census for two reasons. The first is that access to that data would not help CFIUS in carrying out its mission. And the second is that providing CFIUS that access would harm our statistical system in the ways described by Under Secretary Darby.

Perhaps to describe why we do not think we need the data it would be best for me to explain to you the data we do use in our cases. Our task is to determine whether there is credible evidence that a foreign acquisition threatens the national security. To do that we need much more detailed information than BEA gets. Their mission is primarily an economic analysis one, not a national security one.

And also we would much prefer to get the data before the transaction is completed, not after it is completed and filed with BEA. The type of information that CFIUS now obtains, and as you said, Mr. Chairman, which we can obtain by subpoena if necessary, and is not collected by BEA and Census, includes: Does the company being purchased have classified contracts? (and I stress this is company-specific information we are getting) What does it sell to the military services or the Defense Department? Does it have technology that could have military applications? Does it export goods that require Commerce Department export control licenses? Does it export goods that require munitions control export licenses.

We also go into quite a bit of depth on what the parent's business activities are. and what the record of that parent has been in this area. The answers we farm out to other agencies. They can ask more questions of the company. We can have long dialogues. We can ask additional questions, all backed up by subpoena powers.

The next question would be, is the information we get accurate? Well, one, I think it is in the interest of the companies to provide us accurate information; and secondly, under the law you provided and our regulations, if we are given misleading information, then we can return to the case and order divestment if necessary.

In short, the detail we go into, the depth we go into, and the powers we have to get information are much, much greater than BEA does. We also of course obtain some of the information BEA does, such as balance sheets, ownership, and so on, but again, I would stress, at a much earlier stage and in greater depth.

But it is not just that providing CFIUS with the disaggregated data would not help us in our mission, the second point is that providing that data would hurt the statistical basis for BEA information. The issue here is opening up the possibility that data provided for economic analysis could be used in a regulatory process.

The issue is not whether the Secretary of the Treasury can be trusted with confidential information, Mr. Chairman. The question is whether the data given to Commerce for economic reasons, for aggregation, should be available to other agencies for regulatory activities, such as implementation of the Exon-Florio provision.

And, as we say, we do not think that is necessary and it would have a cost.

In conclusion, Mr. Chairman, we are confident we are obtaining the data we need to carry out the Exon-Florio provision of U.S. law. We do not need access to disaggregated BEA or Census data, and we see real harm with giving us access to that data.

That concludes my oral statement, Mr. Chairman. Thank you very much.

[The statement and questions and answers follow:]

Statement of William E. Barreda
Deputy Assistant Secretary of the Treasury
for Trade and Investment Policy
Before the Committee on
Commerce, Science and Transportation
United States Senate

July 19, 1990

Mr. Chairman and Members of the Committee:

Thank you for the invitation to discuss data needs of the United States Government in evaluating foreign direct investment.

In congressional testimony earlier this year, members of the Administration indicated that the United States Government does not need access to confidential BEA or Census data to implement the Exon-Florio provision. This provision is section 721 of the Defense Production Act of 1950 (DPA), which was added to the DPA by section 5021 of the Omnibus Trade and Competitiveness Act of 1988.

Since this is Treasury's first opportunity this year to testify on the data question, I thought it would be helpful to address what data are used by the Committee on Foreign Investment in the United States (CFIUS) to implement Exon-Florio, how CFIUS uses these data, and why CFIUS does not need access to BEA's or Census's confidential data.

Before doing so, however, I want to state that Treasury supports the Exon-Lent bill. Although neither BEA nor Census data are used or needed in implementing the Exon-Florio provision, Treasury agrees with the Commerce Department that it is highly desirable for BEA and Census to share data between themselves.

Data Which CFIUS Needs

The Exon-Florio provision drives the data needs of CFIUS. Under that provision, the President may take action to prohibit or suspend an acquisition only if the President finds that:

> There is credible evidence that leads him to believe that the foreign investor might take action that threatens to impair the national security; and
>
> Existing laws, other than the International Emergency Economic Powers Act and the Exon-Florio provision, do not provide adequate and appropriate authority to protect the national security.

The provision is directed towards national security concerns arising from foreign acquisitions of U.S. firms. The legislation does not define national security, but the legislative history states that national security is to be broadly defined, "without limitation to particular industries." However, it is also clear that Congress rejected proposals to expand the statute's coverage to include threats to "essential commerce" and "economic welfare" and that Congress did not intend to impose barriers to foreign direct investment.

We believe that the authorities under Exon-Florio are appropriate to protect against national security threats while not undermining the United States' 200 year open investment policy. That open policy serves United States interests well. Foreign direct investment improves our international competitiveness and productivity through infusions of capital, technology and management skills. Countries which restricted foreign investment in the 1970's hurt their economic competitiveness, and in recent years they have liberalized their foreign investment policies.

Contents of Voluntary Notice

In implementing the Exon-Florio provision, the Treasury Department published proposed interim regulations last year in the Federal Register. Those regulations, which will soon be published in final form, prescribe the contents of voluntary notifications to CFIUS by parties to transactions.

The notification describes the transaction, including the nature of the transaction (such as by merger or purchase of voting securities); the names, addresses and nationalities of the parties, including the foreign person making the acquisition, the foreign parent and affiliates of that foreign person (if any), and persons who will exercise control over the U.S. firm to be acquired; and the expected closing date for the transaction.

If the acquisition is structured as an acquisition of assets, the notification describes the assets to be acquired. Also, the notification describes the business activities and product lines of the U.S. person, the location and Commercial and Government Entity (CAGE) Code of each of its U.S. facilities having defense contracts or technology having military applications, the identification numbers for each defense contract, the identification numbers for each classified contract with any U.S. Government agency, and any products or services (including research and development) which it directly or indirectly supplies to the military or the Defense Department or which has technology having military applications.

In addition, the notification describes the business of the foreign person, its parent and any affiliates. The notification also describes, for goods and services affecting national security, the plans of the foreign person for the U.S. person with respect to reducing, eliminating or selling research and development or facilities; changing product quality; shutting down, moving offshore, or relocating facilities within the United States; or consolidating or selling product lines or technology.

Also, the notification describes whether the U.S. person exports products or technical data subject to Commerce Department export controls or defense articles and services subject to State Department munitions controls. The notification lists any other filings to be made with U.S. Government agencies regarding the acquisition.

After reviewing this written notification, CFIUS in appropriate cases requests the parties to submit additional written data or to meet with CFIUS to discuss the written submissions. For example, where the technology is very complex, we may request more detailed descriptions and technical information on the technology in question as well as a description of alternative or comparable technology. We may ask and indeed have asked for a demonstration of the technology in some cases. CFIUS may also undertake site visits to see first-hand the facilities and technology of the U.S. entity being acquired. In all these contacts, we place a very high premium on protecting proprietary and confidential information obtained from the companies.

How CFIUS Uses The Data

When a notification is received, the CFIUS staff chairman reviews it for completeness of essential information. If all essential information is in order, the review period commences the day after receipt of the notification.

The notification is distributed to CFIUS member agencies, which analyze the information submitted and also develop their own information relevant to the transaction. For example, based on the notification and its own information, the Defense Department will ask its Defense Investigative Service whether either party has security clearances for personnel or facilities related to classified defense contracts. If there are such security clearances, Defense will check its records to determine whether the parties have histories of violating the clearances or have failed to perform satisfactorily on these classified contracts. Similarly, Defense will ask its industrial analysts to determine whether the firm to be acquired produces a product, service or technology which, although unclassified, is essential to the defense industrial base. In addition, if the products, services or technology are essential, industrial analysts will then evaluate alternative sources of supply.

The Commerce Department will send copies of the notification to interested divisions in that Department. For example, it will send a copy to its Bureau of Export Administration to check whether the U.S. person exports products, services or technology subject to export controls. Commerce will also check whether either party has a history of violating U.S. export control law. In addition, Commerce's industry analysts will review the technology of the U.S. firm to assess the importance of the firm to our defense industrial base and national security.

The State Department will send a copy of the notification to its munitions control experts to determine whether either party has licenses to export products on the munitions control list. If there are such licenses, State will review its records to determine whether there have been violations of these licenses.

In addition to using the expertise of its eight members, CFIUS frequently calls upon non-member agencies or offices to advise it on particular matters. For example, the White House Office of Science and Technology Policy will be asked for advice when the U.S. person has high technology products or services. The Energy Department will be asked for advice when the U.S. person has classified or unclassified contracts with Energy or is involved in an energy industry.

By the 20th day of a review and sometimes earlier, the CFIUS staff will have a good sense as to whether additional information is needed or whether the staff has sufficient information to make a recommendation of no national security threat. If more information is needed, CFIUS requests this information from the parties and from member agencies where relevant. Where the initial 30 days following notification are not sufficient for CFIUS to complete its analysis of a particular transaction, it will enter into an extended investigation period of 45 additional days.

Since the Exon-Florio provision was enacted, CFIUS has received 409 voluntary notifications. Intensive reviews were conducted on all transactions with a bearing on national security. Ten transactions went to 45-day extended investigations. Of those going to extended investigations, six have been decided by the President. He intervened in one transaction, in which he ordered divestiture, and took no action in the other five. In two transactions, the extended investigation was terminated after the parties withdrew their notification. One transaction is pending in the extended investigation stage, and one transaction is before the President for decision.

BEA's Data

BEA collects confidential data on the very broad range of direct investments and trade in services. These data are collected for analytical and statistical purposes under the International Investment and Trade in Services Survey Act of 1976.

In accordance with BEA's analytical and statistical mission, the BEA data focus on economic and financial operations and balance of payments flows, such as sales, employment, payroll, land ownership, dividend flows, and how an investment is financed. BEA obtains its data from the foreign-owned U.S. firm after a transaction is completed.

Why CFIUS Does Not Need BEA Data

Drawing from what I said about CFIUS's work, I would like to summarize why CFIUS does not need access to BEA's confidential data.

-- BEA and CFIUS each have a different mission; each requires data appropriate to that mission.

-- CFIUS is concerned with assessing threats to national security, while BEA is concerned with economic analysis.

-- To this end, the information CFIUS needs is directed towards obtaining "credible evidence" of "actions" that a foreign entity may take "that threatens to impair the national security." BEA data are the bricks and mortar of economic analysis of foreign direct investment, and not of national security analysis.

-- Since CFIUS must make recommendations on national security, it obtains data prior to completion of the proposed transaction; BEA obtains its data after the transaction is completed, as is appropriate for compiling a data base for statistical and analytical purposes.

In sum, CFIUS has access to the confidential and proprietary data it needs under the Exon-Florio provision to do its job. BEA's confidential data are not appropriate or necessary for CFIUS.

I would like to add one final point about confidentiality and information dissemination. As the lead agency of CFIUS, Treasury is in a position of obtaining highly proprietary business information and in some cases highly classified government information. Thus, Treasury can fully appreciate and endorse the view that BEA's ability to collect useful data would be made more difficult if the information it gathers were more widely disseminated. Permitting other entities, such as CFIUS, access to BEA's data could make domestic and foreign parties reluctant to give BEA sensitive proprietary data, for fear it could be disclosed to competitors or used inappropriately.

Concluding Remarks

I hope my remarks give a clearer idea of the type of data CFIUS requires for its implementation of the Exon-Florio provision, and of the ample resources at CFIUS's disposal for obtaining that data. CFIUS does not require access to BEA or Census data to carry out its Exon-Florio responsibilities.

Thank you again for the opportunity to make a statement. I am pleased to answer any questions you may have.

Follow-up Questions to the July 19, 1990, Hearing before the Senate Commerce Committee

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Questions from the Chairman

QUESTION 1.

The bill that Congressman Sharp has proposed would grant limited access to CFIUS of BEA and Census documents. Would this information be helpful to CFIUS?

ANSWER

No. The information which Congressman Sharp's bill would provide CFIUS is statistical in nature and would not be particularly useful to CFIUS's national security investigations. CFIUS consideration of foreign acquisitions frequently focuses on quite narrow product and technology areas. Our experience is that information on those areas are most efficiently obtained from other government and private sources. CFIUS, when indicated, routinely requests and receives information about the extent of foreign ownership in the industrial sector of the American firm to be acquired.

CFIUS has ample powers under the Defense Production Act, of which the Exon-Florio provision is a part, to compel (by subpoena if necessary) information it needs. To date, however, CFIUS has had excellent voluntary cooperation from parties to transactions in response to CFIUS's often extensive information requests. This cooperation stands to reason. The purpose of a filing is to remove the threat of sanctions under the Exon-Florio provision. Failure to provide information to CFIUS would not accomplish that goal since CFIUS has authority to reopen cases if there have been material misstatements or omissions.

CFIUS has considerable resources at its disposal. These include industrial and country analysts in the Departments of Defense, State, Commerce, and the intelligence community; trade journals; SEC filings; and persons in the private sector with an interest in acquisitions.

QUESTION 2.

Does CFIUS have methods for ascertaining that a pending Exon-Florio transaction would result in no remaining American-owned firms in a specific sector?

ANSWER

Yes. As indicated in the response above, CFIUS can ask the parties to the transaction, which have great incentive to provide accurate information, about the extent of foreign ownership in the sector. Government industry analysts; on-line data services, such as Dunn & Bradstreet; and the business and trade press are other CFIUS resources. CFIUS has found that it can tap these sources with a quick turnaround, and has confidence in the information available to it at the time a determination is made with regard to a particular transaction.

Questions from Senator Exon

QUESTION 1.

A May 24th letter from Delegate Fauntroy to Secretary Mulford expressed concern about the workload, staffing and funding of the Office of the Assistant Secretary for International Affairs. Has there been an expanded work load? What are the funding requirements of the office and has the Treasury Department made its needs known to the Congressional appropriators?

ANSWER

The Office of the Assistant Secretary for International Affairs, in the Treasury Department, has indeed experienced significant increases in workload. Demands for economic analyses, financial evaluations and reports, and loan reviews for individual MDB's have risen dramatically. Complex issues including Latin America, Eastern Europe, the environment, foreign investment in the United States, and trade negotiations require considerable time for technical analysis and review. The Office is now heavily involved in analyzing and monitoring economic developments related to the Persian Gulf situation.

The Senate Committee on Appropriations has recently marked up the Treasury appropriations bill for fiscal year 1991, HR 5241. In its accompanying report, the Committee recommends adding $2.2 million and 22 FTE positions, above the budget request of $15.7 million and 211 FTE positions for the Office of the Assistant Secretary for International Affairs, for the following purposes:

- Respond to economic and policy issues related to East European countries by establishing a financial post in Warsaw, Poland; monitoring newly created European Bank for Reconstruction and Development to promote the economic growth of Central and East European countries; and developing technical assistance programs involving economic and financial services for qualified East European countries.

- Implement the structural impediments initiative with Japan to promote United States exports to Japan by removing structural trade and investment barriers.

- Implement the Exon-Florio provision relating to the acquisition of U.S. firms and national security. Note: The number of Exon-Florio filings increased dramatically with the publication last year of the proposed regulations. As an illustration, from January through July, 1990, CFIUS received 201 notifications; the comparable figure for 1989, before the proposed regulations were published, was 67.

- Open a financial attache office in Brussels, Belgium, to interface with the European community as it moves toward full economic integration in 1992.

- Implement the new Enterprise for the Americas project including a trade initiative to move toward free and fair trade within the western hemisphere; an investment initiative to encourage capital flows and improve the environment; and a debt initiative to support debt and debt-service reduction in Latin America and the Caribbean.

- Identify new approaches to help overcome sub-Saharan Africa's continued economic stagnation and debt burden and promote environmental interests in reviewing multilateral development bank loans, including tropical forest projects in Brazil, Sri Lanka, Guinea, and the Ivory Coast.

QUESTION 2.

With the Exon-Florio law, how does the United States compare in foreign investment policy with other industrialized nations? Do variations of policies between nations create an economic disruption? Which industrialized nation has the most open investment policy, and which has the most closed?

ANSWER

A 1988 Treasury Department study of investment restrictions of the Summit countries indicated that the United States, Germany, the United Kingdom, and Italy have the most open investment regimes. In terms of laws and regulations the United States does not stand out as particularly more open than the others. However, because the United States has an open business climate and a smaller public role in the industrial sector than the others, the United States, de facto, is more open to foreign investment.

Canada, France, and Japan have relatively more restrictions on foreign direct investment. Of those, Japan, in part because of business practices (keiretsu, i.e. inter-corporate groups), has been less open to foreign investment. Recent changes in the investment policies of those countries have been in the direction of more open investment regimes: Japan recently committed, as a consequence of the Structural Impediments Initiative talks, to undertake revisions in its laws to make foreign investment easier and to implement measures to make keiretsu more open and transparent. Canada liberalized its investment policy in the mid-1980s (after a disastrous series of restrictive policies) and is continuing to liberalize as it phases in provisions of the U.S.-Canada Free Trade Agreement. France has eliminated pre-notification requirements for greenfield investments, and has recently shifted from an investment approval system which required an affirmative approval from the government to one which permits an investment to go forward after 30 days, absent objection.

Economic disruption may be too strong a word to describe the effects of investment policies that depart from openness. But clearly restrictive policies cause distortions in trade and resource allocation. This is true because investment restrictions and performance requirements for investors impede capital from reaching its most efficient use, with the result that world output is less than it otherwise would be.

Senator Exon. Gentlemen, thank you very much. You both referenced somewhat the concerns raised by Senator Murkowski here today. I take it that you, representing the Administration, are opposed to adding as an amendment the suggestion made very forcefully here today by Senator Murkowski?

Mr. Darby. Yes, sir.

Mr. Barreda. That is correct. I have a feeling there might be some misunderstanding. It is not that we do not think we need information, it is that the type of information that CFIUS needs we now get in much greater detail thanks to the powers in the law, which I know you were very instrumental in developing.

So the issue is not do we need the information. We have the means of getting it, and we are getting it, Mr. Chairman.

Mr. Darby. If I might add, I hate to say that our information is too little and too late, but there is some truth to that. By the time it is reported to us it would be too late to be useful in that process. And we certainly would regret it if those reports were in fact filed by lawyers, begging the pardon of members of the bar in this room. We would prefer to keep getting the data from the bean counters without worrying about any regulatory overtones. We think that on the limited information we do get, it is more important that we get it from the sources without any questions of regulatory issues.

Senator Exon. Do you generally agree with the statement that I made earlier that CFIUS prior to Exon-Florio and absent the proposals made in the Exon bill simply did not or does not now have the information in a broad-based fashion to make the decisions that we expect CFIUS to make?

Mr. Darby. I will defer momentarily to my colleague, Mr. Barreda, looking at it from the point of view of CFIUS as an active participant.

I would say that in terms of the overall data, your bill would permit us to provide much more detailed information; for example, for an industry producing a particular product, what percentage of production in that industry is by foreign-owned firms which we cannot now provide them. Let me refer to Mr. Barreda as to their ability to get that information from other sources.

Mr. Barreda. Mr. Chairman, I see the bill really as helping us much more in what I would call economic analysis, more general questions of foreign direct investment rather than the decision on a specific case of a takeover of a company—whether that should be allowed or not.

Our data now are, I think, somewhat misleading in that we do not have the detail on the various types of activities that a foreign investor is in. This is for general economic type analysis. As I said, in a specific case we have very detailed information, and we can get as detailed as we want. The improvement in this bill, I think, would be in the economic analysis and knowing the overall impact of investment in the United States and not in a specific Exon-Florio case.

Senator Exon. What do you say about the criticism that Senator Murkowski had of the bill that caused this hearing to be brought about, the one I was asked to introduce along with Congressman Lent by the administration? What do you say to the criticism offered by Senator Murkowski that the information is on industry-wide determinations rather than on specific items that would affect CFIUS' decision on an individual company? Is that a legitimate criticism of this measure?

Mr. **Barreda.** I think I probably agree with Senator Murkowski's objectives that the idea is we want good information on investment. I think he may not be really familiar with the specific procedures we use in an individual case and the in-depth information we get on a company basis, again using the point you make, backed up by subpoena power if necessary.

The files of an individual case we have, Mr. Chairman, are incredibly thick and incredibly detailed and certainly on a company basis, including the parent company. I do not think we need the type of data the BEA gets which, as we said, comes after the acquisition, to improve our analysis of that specific case.

I think we might be talking about different issues here, and I think we may be addressing different types of questions. The Senator may have some concerns that may be different than the ones we are dealing with here, which is the implementation of the Exon-Florio provision. There, I think we certainly have adequate data.

Senator **Exon.** Let me press this point a little further, if I might, with you, then, Mr. Darby. In what shape, in your opinion, is the overall statistical ability of the United States Government in this area? Did the statistical operations of the United States Government receive appropriate attention before the 1980s? What can be done to improve statistical accuracy?

Are you concerned about the reaction of the financial markets to the preliminary statistical reports?

That is a whole series of questions, and I am trying to get into some specifics so we will have them for the record as to how you and your department feel in this area.

Mr. **Darby.** I am afraid my memory is not good enough to answer them all, so I will give it a first stab and maybe you can follow up if I leave out anything important.

I think overall the statistical system as we currently see it on a broad basis is extremely stressed. The President in the fiscal year 1991 budget has requested funds to try to alleviate that stress which has this statistical system in danger. So far, I know that the House Appropriations Committee has been responsive given the concerns expressed by members of both houses about our ability to provide information.

One of the elements in that request is funding to vastly improve the statistics that we can report with respect to foreign investment, both foreign investment within this country and our investment abroad which your bill would help by permitting us to make the sharing between some data sets we have in the Census Bureau and some data sets that we have in the Bureau of Economic Analysis, both principal components of my Economics and Statistics Administration.

So your bill and the funding to implement it together are going to permit us to do this with no increase in the burden on respondents. By respondents we include not only the foreign investors but also the American-owned firms who also respond to many of these surveys that we are going to be linking.

Without increase in burden on the respondents, we will be able to provide you, other policymakers and the public—because I think it is important that a variety of viewpoints be represented in analyzing this data—with much more detailed data than we have now. I think that this will permit us to go forward. I regret that it has not already been done. I started talking about this sort of linkage at my confirmation hearing, and I hope that I get no grayer before it happens.

You may want to follow up with some of the other questions that I may not have touched on, sir.

Senator Exon. Are you concerned about the reaction of the financial markets to the preliminary statistical reports?

Mr. Darby. That is a concern. We always have to trade off timeliness and accuracy. If you can imagine our statistical system having a constant flow-in of returns to our surveys and other measurement instruments, whenever we give a report we give what does the data we have received so far tell us about the economy. So if we delayed the report, we would have more statistics and, hence, a more accurate report.

Somebody like Chairman Greenspan who may have to make a decision now—and I, too, have met a payroll, and I have been out in the private sector trying to make economic decisions. Sometimes we cannot wait. So I think that the financial markets and most policymakers, be they private or public, soon learn the limitations of the preliminary reports, that they are only based on the limited database, and hopefully they learn it by reading our warnings rather than the hard way.

Senator Exon. Sometimes I wonder, Mr. Darby. We are concerned about that and, I think, rightfully so. Being strictly an amateur's amateur in economics, I have not been able to figure out the stock market today with the dire predictions of budget difficulties, skyrocketing national debt and all of these kinds of things that are a possible concern in our financial system. Yet, the stock market is reaching new highs. Maybe we should not be too concerned about that. I do not know whether they listen or do not care or just know more about it than does an amateur economist.

Let me turn, if I might, then, to a question or two of you, Mr. Barreda. When will the regulations on the Exon-Florio bill be published and finalized?

Mr. Barreda. Mr. Chairman, I have been wrong on that before, so let me be vague.

We are shooting to get them out very soon. That, I think, is where I would like to stop. We are working on it. There are some difficult issues we are addressing, and we are trying to reach a consensus and come out with the regulations. I hope it will be soon.

Senator Exon. A former very excellent public official who is now in the private sector, Elliot Richardson, will be testifying on the next panel. Are you familiar with the suggestions that he has made with regard to some possible changes or implementation of the Exon-Florio law that could or should be included in those regulations when they are published?

Mr. Barreda. We certainly are, and those are some of the questions that we are addressing in trying to come up with the final regulations.

Senator **Exon**. You cannot amplify on that any more than that statement right now?

Mr. **Barreda**. I would rather not, Mr. Chairman, because the final regulations will explain where we came out on the questions. Until that final decision is made, I really would rather not make any further statements on that.

Senator **Exon**. We have been very patient on that, and I know it is a very difficult task. I do think it would be helpful if we could get those finalized as soon as possible, so I would urge you to expedite that.

Can you tell us whether you think this will be—whether the final regulations will be out in a matter of weeks, months or years?

Mr. **Barreda**. Very soon, Mr. Chairman.

Senator **Exon**. At least by 1995. Let me return to you for one last question, Mr. Darby. Recently, the Bureau of Economic Analysis released some foreign investment information but failed to release the bottom-line figures. Could you explain why the Exon/Lent bill helps solve this problem, or contribute to it?

Mr. **Darby**. I am not sure that it will have much effect one way or another on that particular problem.

Let me explain. It really goes back to my earlier answer. The budgetary problems of the statistical agencies are very real. BEA, which produces these data, have lost about 20 percent of their personnel due to budget cuts over the last ten years. Basically, in a number of areas, academic critics have pointed out that what BEA is doing is fundamentally flawed, but we have not had the people to correct what we are doing.

One example is GNP by industry, which we had to suspend—my predecessor had to suspend in 1988. Another example is foreign investment, where it turned out that adding 1957 dollars, 1982 dollars and 1989 dollars is not adding apples and apples, it is adding pomegranates, oranges and apples all together in one big pot, and it clearly was misleading. We do not think it was misleading so much on year-to-year changes, but the level seems to have been fundamentally misleading. So we, as is the practice at BEA—and we fully support that practice—suspended the reporting of misleading data.

They have a program underway to come up with market value estimates that could be added up, and I should also say, since I mentioned the GNP by industry, the House and Senate's concurrence with our reprogramming for fiscal year 1990 provided enough personnel that they expect very soon to be able to again be publishing that third element of our GNP accounts, the GNP by industry. Obviously, these sort of limitations are a reflection and an explanation of the President's substantial request and initiative to improve the economic statistical system. We think it is essential to do so.

Senator **Exon**. Mr. Darby, one last question of this panel. As a part of the omnibus trade bill, included in Exon/Florio was an amendment, an additional amendment that I authored with regard to the establishment for the first time of a barter office in your Department. It seems to me that the events that have happened in the last year, especially the Eastern European countries and others who are obviously very cash-poor, that barter might be a way for us to help them and them to help us. Are you familiar with the barter office and what activity is going on there, and how do you see the Department of Commerce assisting in the barter method of trade?

Mr. **Darby**. No, sir, I am not familiar with that. That would probably fall with the Under Secretary for International Trade.

Senator **Exon**. Thank you very much, Mr. Darby. Thank you very much, Mr. Barreda. We appreciate you being here and giving us your testimony this morning.

I will call the last panel, then. Panel two is Mr. Allan Mendelowitz, Director of Trade, Energy and Finance Issues, General Accounting Office, Dr. John Howard, Director, International Finance, United States Chamber of Commerce, Mr. Elliot Richardson, Chairman of the Association of International Investment, and Professor Edward Graham, Institute of International Economics.

Gentlemen, welcome to you. We appreciate your patience. We consider your testimony extremely important this morning with regard to the matter before us. Your written statements, if any, have been already incorporated in the record, so if you could give us as brief as possible your verbal testimony, we would be very appreciative of that. We will start with Mr. Allan Mendelowitz, Director of Trade, Energy and Finance with the General Accounting Office.

STATEMENT OF ALLAN MENDELOWITZ, DIRECTOR, TRADE, ENERGY AND FINANCE ISSUES, GENERAL ACCOUNTING OFFICE

Mr. **Mendelowitz**. I will be more than happy to read a very short statement and submit the full statement for the record. I am pleased to be here to testify today before this Committee on the subject of foreign direct investment in the United States.

As you know, recent increases in foreign investment have raised concerns about the consequences of foreign ownership of U.S. assets, and about the adequacy of Government statistics on foreign investment. It is understandable that the public wants to know more about foreign investment, since foreign ownership inherently means that key business decisions can be made overseas on such matters as research, investment, employment and location.

In our work on this subject, we have tried to identify specific concerns about foreign investment and the types of data available or needed to analyze these concerns. In general, we believe that improvements in the available foreign investment data would benefit public understanding of an economic trend likely to continue over the next few years. We also believe that if GAO had access to certain types of foreign investment data that are now closely restricted, this access would allow us to better respond to congressional interest in improving public understanding of foreign investment.

I know from your introductory comments, Senator, that your bill represents the position taken by the Administration. We believe that the cross-walk of the data between Census and BEA would make a very important contribution to resolving a number of the deficiencies that we found in the available data on foreign investment.

But I should point out that any legislative originating in the Executive Branch will be very short on supporting initiatives to improve congressional oversight. I cannot think of any example in which the Executive Branch has come to the Congress to strengthen the ability of GAO to help the Congress improve its oversight. We do believe very strongly that gaining GAO additional access to this data would enhance our ability to provide the Congress with independent analysis and evaluation of the trends that are going on.

The Administration basically does not like independent congressional oversight by the General Accounting Office. They do not like it because they cannot control it. To the extent that the Congress is able to gain additional insight, analysis and independent evaluation from the work of the General Accounting Office, it represents an ability of the Congress to break the monopoly on information held by the Executive Branch.

The Administration knows that if hundreds of billions of dollars of taxpayer money disappeared because of fraud, abuse and poor regulation of the S&L industry, the General Accounting Office will be called in to find out who is responsible. The Executive Branch knows that if NASA launches a very expensive, myopic observatory into orbit, the General Accounting Office will be called in to find out who is responsible for these errors.

So we just want to emphasize again that while the initiative in your legislation is very helpful and very useful and it is something we have been supporting for a number of years, we think that this bill could be greatly improved by adding GAO access to this information so we can provide better service to the Congress.

In support of improved data, we have found that some questions that get raised cannot be answered because of limitations on Government foreign investment data. The general problems with the data systems of the BEA include timeliness, consolidated reporting, classification methodology, and access to data. We have also found some questions whose answers require either policy judgments about the future behavior of foreign investors or different kinds of data than foreign investment data.

For example, we found that important questions regarding national security concerns posed by individual investments required identifying the U.S. firm's link to national security and assessing foreign investor intentions regarding technology transfer, assured supply to the Defense Department or its contractors, and the security implications of any commercial advantage gained through the investment.

Improved foreign investment data cannot answer these questions, which are frequently raised in the interagency review process for national security-related investments as provided for in the 1988 Exon/Florio Amendment to the Defense Production Act.

This concludes my statement, and after the other statements I would be happy to try to answer any questions you might have.

[The statement and questions and answers follow:]

STATEMENT OF ALLAN I. MENDELOWITZ, DIRECTOR, INTERNATIONAL TRADE, ENERGY, AND FINANCE ISSUES, GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Committee:

I am pleased to testify today before this Committee on the subject of foreign direct investment in the United States.

As you know, recent increases in foreign investment have raised concerns about the consequences of foreign ownership of U.S. assets and about the adequacy of government statistics on foreign investment. It is understandable that the public wants to know more about foreign investment, since foreign ownership inherently means that key business decisions can be made overseas on such matters as research, investment, employment, and location.

In our work on this subject, we have tried to identify specific concerns about foreign investment and the types of data available or needed to analyze these concerns. In general, we believe improvements in the available foreign investment data would benefit public understanding of an economic trend likely to continue over the next few years. We also believe that if GAO had access to certain types of foreign investment data that are now closely restricted, this access would allow us to better respond to congressional interest in improving public understanding of foreign investment.

We have found that some questions cannot be answered because of the limitations of the government's foreign investment data. The general problems with the data system of the Bureau of Economic Analysis include timeliness, consolidated reporting, classification methodology, and access to data. We have also found some questions whose answers require either policy judgments about the future behavior of foreign investors or different kinds of data than foreign investment data.

PURPOSES AND LIMITATIONS OF GOVERNMENT DATA

Let me first take a moment to summarize the purposes and limitations of the government's databases on foreign direct investment in the United States.[1]

Cumulative foreign direct investment in the United States is measured in two different ways by the Commerce Department's Bureau of Economic Analysis (BEA), which has primary responsibility for collecting such data. The first method measures net foreign capital flows into the United States and shows the total accumulation of foreign direct investment over time. This is the Foreign Direct Investment Position and Balance of Payments Flows data series. The second method measures the total value of a U.S. affiliate's assets in which a foreign investor has an equity share of at least 10 percent. This is the Operations of U.S. Affiliates of Foreign Companies data series.

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[1] For a more complete discussion, see Foreign Investment: Federal Data Collection on Foreign Investment in the United States, (GAO/NSIAD-90-25BR, October 3, 1989).

In addition, another BEA data set, U.S. Business Enterprises Acquired or Established by Foreign Direct Investors, measures annual transaction values for new acquisitions of existing U.S. companies and for start-up investments. Finally, the Benchmark Survey of Foreign Direct Investment in the United States, comprising all three data series, provides more detailed information every 5 years.

Usefulness and Limitations

Each of these data series is useful in capturing a different aspect of the total investment picture; however, each also has limitations inherent in its methodology.

The following hypothetical case is a simplified example of how the three data series capture a different aspect of foreign direct investment transactions. Let us suppose that ABC Company of the United Kingdom makes an initial investment in the XYZ Company in the United States. ABC Company pays $100 million to buy a 50-percent share of the XYZ Company, which has a total worth of $200 million. Its transaction is structured so that it raises $50 million in the United Kingdom, and another $50 million is borrowed in the United States through a U.S. affiliate. The balance of payments data series would report the $50 million capital inflow from the United Kingdom; the enterprises acquired or established data series would report the $100 million investment outlay; and the affiliates data series would report the $200 million company as a foreign affiliate.

While the BEA data series help to piece together the foreign investment picture, there are important gaps and disparities in available data. For instance, the balance of payments data provide information about the amount of foreign funds that come into the United States, but they are not designed either (1) to capture the amount of the total investment transaction if funds from U.S. sources are used or (2) to identify the ultimate beneficial owner. These data also are based on book value, the value of the investment when it was initially made.

The data on enterprises acquired or established provide information about the total investment outlay or transaction cost, but only for new investments in that given year. If an existing investment is expanded in the following year, it would not be captured. This data series also classifies investments under the primary line of business of the new enterprise, unlike the balance of payments or affiliates data series, which classify investments under the line of business of the foreign investor. This classification difference means that the data on enterprises acquired or established cannot easily be compared to the other data series on a sector basis.

The most detailed of the data series, the affiliates data, provides information about the value of the total asset in which the foreigner has invested. Because these data include all firms that have more than 10-percent foreign interest, the question arises as to what portion is held by relatively small foreign equity interests in U.S. firms. BEA data showing the affiliates' sources of funds, however, indicate that foreign firms hold about 80 percent of the equity in such firms. Therefore, using the 10-percent equity interest rule to define foreign direct investment does not particularly distort the investment data. One exception is in the reporting of Japanese interests in the nonbank finance sector, where Japanese firms have purchased minority interests in U.S. securities brokerage or investment firms, which have very large assets relative to equity.

Unlike the balance of payments data, the affiliates data do include the U.S.-financed portion of the investment and attempt to report the country of the ultimate beneficial owner. Finally, due to the detailed information collected, which includes balance sheet items and statements of income, these data take longer to be reported, checked, and compiled: preliminary data are 2 years old by the time they are publicly reported, and revised data are 3 years old.

General Problems

This brings us to the subject of the general problems in the BEA data.

1. Timeliness - BEA publishes the preliminary balance of payments and new enterprises data about 6 months after the end of the report year. It should be recognized that BEA does publish these data on a timely basis. However, because of late reports and corrections, the revised data published in the subsequent year have often reflected significant changes. Timeliness is an issue with regard to the affiliates data, which is, however, the most detailed data series.

2. Classification methodology - The data are limited by the industrial classification system used. This is roughly based on the three-digit Standard Industrial Classification (SIC) level, which BEA feels is the lowest level to reasonably classify enterprise data. BEA does not require greater detail in identifying industrial classification in company reporting. This means that many important industry sectors are not listed separately, including numerous sectors vital to national security, such as aerospace and semiconductors.

3. Consolidated reporting - Data are reported on an enterprise rather than an establishment basis. In other words, the U.S.

affiliate corporation files a single report for all of its assets, including its own subsidiaries. For example, a U.S. petroleum corporation with foreign ownership interests may own many subsidiaries in varying industry sectors, each one of which may have many establishments (which can be individual factories or properties). But it will file one report for the whole enterprise, all of which will be classified under the petroleum sector by BEA. This can skew the data in all sectors. Although establishment-level data are needed for adequate analysis of important public policy questions, BEA collects only limited data on sales and employment below the enterprise level. According to BEA, collection of more industry detail below that level is constrained by the requirements of the Paperwork Reduction Act to minimize the burden on respondents.

The BEA and the Census Bureau are currently working on establishing a data link between their databases. Census data contain detailed individual establishment-level information but do not highlight foreign ownership, while BEA tracks foreign ownership but collects only enterprise-level data. A pilot project is underway to use the firms' Internal Revenue Service Employer Identification Numbers to match the BEA enterprise data to the Census establishment data. Commerce could then publish these new data annually at an aggregated level. Even in aggregated form, the data would provide greater sectoral breakdowns (such as for aerospace or semiconductors) and at least partially address the classification and consolidation problems discussed above. The objective of this new data set is to have more reliable and detailed information on foreign direct investment without placing a greater burden on the private sector. Achieving this will require overcoming technical problems and obtaining additional resources.

4. Access to data - The individual firms' reports are confidential. Access to this information is statutorily limited to officials specifically designated by the President to perform analytical and statistical functions under the International Investment and Trade in Services Survey Act of 1976. Only aggregated data are released outside of BEA. This limits others with a legitimate need to know from examining the data to further track foreign direct investment in specific industry sectors. It also results in substantial data suppression in the state-level data in order to protect the confidentiality of respondents, who could be identified when the number of affiliates is small.

GAO ACCESS TO DATA

The legislative branch needs to be fully informed about the nature, extent, and effects of foreign direct investment in the United States. Proposed legislation providing GAO access to foreign direct investment data that is otherwise restricted would be consistent with GAO's mission and appropriate and beneficial to legislative branch oversight in this area. Providing GAO access to these data would allow it to perform such evaluations for the Congress and to assess the adequacy of federal government data on foreign investment.[2]

The issue of safeguarding the confidentiality of data should be separate from the issue of who should have access. Access should be determined on a need-to-know basis. Confidentiality of data is safeguarded by the procedures for gaining access and handling, and by regulations prohibiting unauthorized disclosure, not by unnecessarily restricting access.

We believe that GAO should have access to foreign direct investment data for the reasons I have just stated. We also note that GAO has in place strict and rigorous programs to maintain the security and confidentiality of information consistent with the requirements of the originating agency.

GAO conducts many reviews of agency programs that necessitate access to confidential, proprietary, sensitive and, in many cases, highly classified information. We routinely have access to national security information of the utmost sensitivity. We also routinely have access to proprietary information more similar in nature to the foreign direct investment data, such as that acquired by federal bank authorities in regulating bank activities. In addition, GAO has access to Internal Revenue Service tax data, including files that show names and social security numbers. In all these cases, procedures are in place that are designed to prevent unauthorized disclosure.

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[2] This issue is discussed in greater detail in our June 13, 1990 testimony, National Security Review of Two Foreign Acquisitions in the Semiconductor Sector (GAO/T-NSIAD-90-47).

In summary, GAO has been entrusted with access to much of the most sensitive data held by the federal government and has an excellent record in safeguarding such data.

MORE THAN IMPROVED FOREIGN INVESTMENT DATA IS NEEDED TO ANSWER SOME IMPORTANT QUESTIONS

I would like to point out that there are also some important questions about foreign investment that cannot be resolved by improving foreign investment data.[3]

In the banking sector, for example, Federal Reserve Board data are comprehensive and publicly available. Specific transactions and foreign investment trends can be identified, showing that foreign investors hold over 25 percent of U.S. banking assets. What is not clear, however, is whether there is some level of foreign ownership beyond which foreign control would be undesirable. For example, could lending decisions affecting the growth and direction of U.S. industry be subordinated to foreign interests? The type of data needed for this analysis would be information relating, for example, to bank lending patterns and competitive behavior.

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[3] For a detailed discussion of these issues, see Foreign Investment: Concerns in the Banking, Petroleum, Chemicals, and Biotechnology Sectors (GAO/NSIAD-90-129, May 30, 1990).

In the petroleum sector, the Departments of Commerce and Energy have detailed data showing the extent and nature of foreign investment, and it is known that members of the Organization of Petroleum Exporting Countries have invested in U.S. refining and marketing facilities. The difficult question is whether such a link enhances security of petroleum supplies or raises the risk of greater U.S. vulnerability to events in the Middle East. Analysis of this question needs to focus both on finding ways to reduce the likelihood that OPEC member countries would choose to exploit any vulnerability and on reducing that vulnerability. For petroleum, of course, it should be recognized that the basic issue is U.S. dependence on oil imports and that the potential for disruption exists regardless of foreign investment levels.

In the biotechnology sector, formal government data cannot be disaggregated to show foreign investments, but private sector data can identify trends indicating increased foreign participation in the U.S. biotechnology industry, particularly by Japanese firms. The central question in this sector is whether the short-term benefits from such investment will match the consequences of transfers of core technologies, including the benefits from commercializing them. Answers to this question would have to come from a closer government focus on the direction and types of technology transfers that are occurring. Indeed, the key question is the basic public policy question of whether the U.S. government should try to ensure that commercially strategic technologies originating in the United States are developed by U.S. firms into commercial products.

With regard to national security concerns[4] about foreign acquisitions of U.S. firms, we found that the most difficult questions posed by individual investments required (1) identifying the U.S. firm's link to national security and (2) assessing foreign investor intentions regarding technology transfer, assured supply to the Defense Department or its contractors, and the security implications of any commercial advantages gained through the investment. Improved foreign investment data cannot answer these questions, which are frequently raised in the interagency review process for national security-related investments, as provided in the 1988 Exon-Florio Amendment to the Defense Production Act.[5]

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[4] For a detailed discussion of these concerns, see Foreign Investment: Analyzing National Security Concerns (GAO/NSIAD-90-94, March 29, 1990).

[5] These issues were also covered in our June 13, 1990 testimony, National Security Review of Two Foreign Acquisitions in the Semiconductor Sector (GAO/T-NSIAD-90-47).

From a macroeconomic point of view, we should recognize that the United States is experiencing increased foreign participation in the U.S. economy in part because U.S. budget and trade deficits require foreign capital to finance them. As long as U.S. domestic savings fail to match federal budget deficits and private sector investment needs, the United States will be dependent on foreign financing. Therefore, foreign direct investment will remain one element of such foreign participation in the U.S. economy.

Overall, we believe improvements can be made in the government's foreign investment data, but we also believe the nation's highest policymakers need to address some of the more difficult questions raised by increased foreign investment in the United States.

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This concludes my statement, Mr. Chairman. I will be happy to try to answer any questions the Committee may have.

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION HEARING OF JULY 19, 1990, ON FEDERAL COLLECTION OF INFORMATION ON FOREIGN INVESTMENT

GAO RESPONSE TO ADDITIONAL QUESTIONS OF THE COMMITTEE

Questions from the Chairman:

1. You have criticized BEA for not requiring greater detail in classifying their data by sector. How detailed would you like them to be?

In our July 19th testimony, we discussed the usefulness and limitations of each of BEA's data series on foreign direct investment (FDI) in the United States. We also pointed out some general problems, one of which was BEA's classification methodology.

BEA's FDI data are limited by the industrial classification system used. This is roughly based on the three-digit Standard Industrial Classification (SIC) level, which BEA feels is the lowest level to reasonably classify enterprise data. BEA does not require greater detail in identifying industrial classification in company reportings. This means that many important industry sectors are not listed separately, including numerous sectors vital to national security, such as aerospace and semiconductors. This would require reporting at the equivalent to the 4-digit SIC level.

We believe that, given appropriate resources, BEA will be able to collect this additional information from the proposed data link with the Census Bureau, rather than requiring additional reporting by firms. Census already collects establishment level data, access to which would enable BEA to identify U.S. affiliates of foreign companies at the equivalent 4-digit SIC level.

However, even with this high level of detail, BEA still would not be able to identify certain foreign-owned suppliers of components critical to sectors such as aerospace or semiconductors. Examples in the semiconductor sector would include x-ray lithography or silicon wafer manufacturers, which have been of interest to the Committee on Foreign Investment in the United States (CFIUS).

The need for detailed sectoral information could be addressed by directing that the Commerce Department's International Trade Administration (ITA) increase its tracking of and reporting on foreign direct investment in specific sectors or subsectors. This would provide the most timely way of identifying foreign investment trends in specific subsectors of interest to the Congress. This would also complement ITA's responsibility for monitoring the increasingly international marketplace for each sector.

2. Has GAO ever been involved in an unauthorized disclosure of proprietary information?

GAO has strict procedures for maintaining the security and confidentiality of information that may be received from other agencies and organizations. In our judgment, and to the best of our knowledge, GAO has not disclosed proprietary information in an unauthorized or inappropriate manner.

3. Why do you think the Administration opposes GAO access to BEA data?

The Administration maintains that any increased access to individual foreign investor data by a nonstatistical agency would undermine the confidentiality of foreign investors and might thereby discourage foreign investment in the United States.

The Administration also maintains that access to the data by any investigatory agency would damage the statistical system because it would set a precedent of nonstatistical use and might result in less complete reporting by foreign investors.

4. Could federal government data collection on foreign investment be coordinated better?

In our October 3, 1989, report, FOREIGN INVESTMENT: Federal Data Collection on Foreign Investment in the United States (NSIAD-90-25BR), we noted that we found 15 federal departments or agencies that collect statistical data and other information on foreign investment in the United States. Within some of the larger federal departments, such as Commerce and Treasury, we identified several separate bureaus or offices that collect different kinds of information, so that together we identified a total of 20 government entities that collect such information.

Some of the data and information collected is considered proprietary business information and has not been routinely available to other federal agencies. Some of the data, such as that on foreign investment in banking or in agricultural land, are publicly available. Some of the data, such as that collected by the Securities and Exchange Commission or the Federal Trade Commission, are not organized to allow systematic analysis of foreign ownership.

We believe that establishing a link between the BEA and Census databases would represent a most valuable form of improved coordination resulting in more detailed information.

5. Do you believe that CFIUS needs access to BEA data to make decisions under Exon-Florio?

CFIUS examines proposed foreign investments in national security-related firms on an individual, case-by-case basis. The BEA data do not provide the kind of detail about defense relationships, the U.S. firm's technology, alternate suppliers, or the new owner's intentions that are key to the CFIUS review process. Also, the BEA data are collected after transactions are completed and thus would not serve to alert CFIUS of proposed investments.

In our work on the data needed by CFIUS for its reviews of foreign investment under the Exon-Florio Amendment, we found that CFIUS generally has had adequate information to analyze specific investment transactions, gathered from a variety of public and private sources. The more difficult questions arising in specific cases did not require further data; rather they required assessments of foreign investor intentions regarding technology transfer, continued supply to the Defense Department or its direct contractors, and use of any commercial advantages gained through the investment.

CFIUS does not perform the type of analyses of foreign investment by industry sector that would necessarily benefit from improved BEA data.

Question From Senator Exon

6. Do the broad powers of the Defense Production Act give CFIUS power to enter into enforceable contracts for purposes enforcing assurances given by parties to transactions?

We understand that this question relates to the situation in which a foreign company gives CFIUS certain assurances that it will/will not take certain actions in the event it takes over a U.S. firm. The particular situation you are concerned about is a foreign company's assurances that it will not close down the firm's operations in the United States. In earlier testimony we mentioned that a senior CFIUS official said that such assurances have no legal standing and that CFIUS does not have the means to follow up and enforce them.

The Defense Production Act, as amended, 50 app. U.S.C. 2061 *et seq.*, serves as the principal statutory basis for the development and maintenance of U.S. defense industrial preparedness. The Act's pertinent provisions authorize the President to demand priority treatment of U.S. Government purchase orders for defense-related products and materials. 50 U.S.C. app. 2071. Specifically, the President is authorized (1) to require that performance under contracts or orders which he deems necessary or appropriate to promote the national defense take priority over performance under any other contract or order, and to (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he deems necessary or appropriate to promote the national defense.

Although section 2071 gives the President broad authority to demand priority treatment for defense acquisition requirements, there is no indication that the President can order a company to remain in business, even if the company had given prior assurances that it will do so. We are also unaware of any situation in which the President has asserted that he has such authority.

Senator Exon. A very brief question. You listened to the testimony by Senator Murkowski this morning. Does the GAO have any opinion as to whether or not it thinks it would be wise to add the bill that Senator Murkowski has introduced to the Lent/Exon measure, or not?

Mr. Mendelowitz. I think that making information available as described in that provision would provide CFIUS with, really, background information to the transactions that they are analyzing. We found that the kind of information required by CFIUS in implementing the Exon/Florio amendment was very detailed and specific to the transaction.

It would not be the kind of data that BEA or Census would have available. However, to the extent that the cross-walk between BEA and Census would deal with some of the deficiencies of the data we found, you would then have data which I think would provide some useful background information to CFIUS in its deliberations but probably no data specific to the individual transaction itself under review.

Senator Exon. Thank you.

I greet our next witness, Mr. Howard.

STATEMENT OF JOHN HOWARD, DIRECTOR, INTERNATIONAL FINANCE, U.S. CHAMBER OF COMMERCE

Mr. Howard. Thank you very much.

The U.S. Chamber appreciates the opportunity to testify at this hearing. And we want to point out, first of all, that we support the free flow of foreign direct investment in the United States as essential to sustained economic growth in the U.S., and opposes efforts to legislatively impose additional restrictions or reporting or public disclosure requirements on such investment.

We feel that enactment of legislation imposing such new restrictions or requirements would prove burdensome and discriminatory. They would jeopardize the flow of beneficial incoming investment. They would undermine ongoing efforts to achieve negotiated agreements to reduce barriers and distortions in other countries. And they could provoke adverse reciprocal action against overseas U.S. investment by foreign governments.

While the overall economic benefits of incoming foreign direct investment are rarely disputed, there is, however, an emerging consensus that the current interagency process for obtaining and reviewing information on such investment is ineffectively organized and that the U.S. Government is therefore depended on information of possibly substandard quality.

The Chamber is concerned that the failure to address credibly these concerns will eventually lead to a backlash against incoming investment that may obscure the recognition of its significant contribution to the economy. And there is no evidence to suggest that this issue will become any less prominent than it has been in recent months and years.

So, for these reasons, the Chamber's board of directors recommended in November 1988 that the incoming Bush Administration take certain actions that would, one, improve the process for reviewing currently available information on foreign investment; and two, assure the public that such improvements are in fact taking place. The Chamber believes that such actions can and should be taken without imposing additional reporting or public disclosure requirements on businesses.

More specifically, the Chamber recommended the Administration take four actions. One, of course, is to restate that the U.S. policy is to continue pursuit of an open investment climate. Two, to use current authority, namely the Exon-Florio amendment, to restrict foreign investments which might jeopardize national security, but only as needed.

Three, require CFIUS to report to the President, the NSC, and the EPC, the Economic Policy Council, on a monthly and confidential basis, describing the size and nature of foreign investments in the United States. And four, if necessary, request legislative authorization for a full-time CFIUS secretariat in the Treasury Department to carry out these policies I have just described.

I want to note on that last point that by a secretariat, we are not talking about a new agency involving a vast number of new employees. We are talking perhaps as few as two or three people whose full-time job it would be to manage and analyze these data.

In accordance with the Chamber's concerns, it also strongly supports S. 2516 and H.R. 4608, the Exon and Lent bills, that seek to facilitate data merging of data collected under current law, without imposing additional reporting and public disclosure requirements. And this would therefore improve the quality of the information that is reported.

The Chamber also supports the underlying objective of Senator Murkowski's bill of establishing a more prominent role for CFIUS in monitoring and reporting on the incoming investment. However, it also believes that amendments to Senator Murkowski's bill are needed to clarify that no additional reporting requirements or direct or inferential public disclosure requirements would be imposed on businesses by his bill.

I noted that he said earlier today that he would be offering language that would achieve that goal. And so we would applaud that action.

At the same time, as I noted earlier, the Chamber continues to oppose additional reporting requirements, as well as the proposed availability of the information that would be collected, as stipulated in H.R. 5 and S. 289, which are the Bryant and Harkin bills. Those provisions are tantamount to public disclosure. Moreover, H.R. 5 and S. 289 symbolize hostility to foreign investment, which could have destructive consequences for the U.S. economy if such hostility results in reduced incoming investment.

Publicity resulting from the proposed Foreign Investment Registry in those bills has the potential for spawning actions against investors solely on the basis of their national origin, and without regard for their legitimate and beneficial activities. Should this legislation become law, foreign investors may perceive significantly increased risk in investing in the United States.

The Chamber believes a strengthened, more coherent system is necessary in order to analyze such information, and ensure that such investment is in fact in the broad national interest, as well as the reassure the American public that additional reporting and public disclosure requirements are unnecessary. The Chamber applauds the initiatives of you, Senator Exon, as well as that of Representative Lent, and others, who recognize that the best policy toward incoming investment is a policy that is rooted in sound, quality information, as well as respect for individual property and privacy rights.

It is the Chamber's hope that the business community, Congress, and the executive branch can work together toward a resolution of this problem that enhances, rather than diminishes the prospects for continued investment and economic growth.

That concludes my statement. I will be glad to try and answer any questions you may have.

[The statement and questions and answers follow:]

STATEMENT OF JOHN E. HOWARD ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce believes that U.S. policy should seek to maintain and encourage the free flow of productive international investment. At the same time, accurate and comprehensive information on such investment must be available on a confidential basis to appropriate federal authorities as a basis for informed U.S. policy toward such investment. Such actions are important to the maintaining an open investment climate and ensuring that incoming foreign direct investment (FDI) is recognized as being generally in the broad national interest.

Since the early 1980s, when the current U.S. economic expansion began and the U.S. also began running consistently large current account deficits, the role of foreign investment in the U.S. economy has come under increasing scrutiny. Foreign investors have found the U.S. to be a "safe haven" for a number of reasons: the size of the U.S. market (the world's largest), the stability of the U.S. political system, relatively low levels of taxation and regulation, a healthy economy, and perhaps most importantly, confidence in the future continuation of these conditions.

U.S. policy at the federal, state and local levels recognizes that foreign investment brings with it important benefits. In 1983, the U.S. government issued a statement explicitly embracing liberal international investment policies as an important component of its economic growth strategy. Various studies have indicated that approximately 3 million U.S. jobs depend on incoming FDI. State, county and local governments around

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[1] Director, International Finance

the U.S. are actively engaged in seeking to attract foreign investment precisely for these reasons.

However, the increasing visibility of foreign investment in many parts of the country has generated a corresponding uneasiness that such investment may bring with it undue foreign influence over U.S. policymaking and a subsequent loss of control over our economic destiny. While evidence of a systematic or institutionalized problem is hard to document, numerous anecdotes concerning foreign investors' influence over public policies in various states and localities are cited as justification for closer surveillance of foreign investment in the United States.

The U.S. Chamber of Commerce is concerned that failure to address credibly these concerns will eventually lead to a backlash against incoming FDI that may obscure recognition of its significant contribution to the U.S. economy. There is no evidence to suggest that this issue will become any less prominent than it has been in recent months and years.

A valid case can be made that the ineffective organization of current mechanisms for reviewing and monitoring foreign investment is contributing significantly to growing public uneasiness concerning incoming FDI. Different agencies collect different information, and consult with each other relatively infrequently. In addition, the Committee on Foreign Investment in the United States (CFIUS), an interagency group supposedly responsible for coordinating the various agencies' efforts, has historically functioned on an ad hoc basis and has had no full-time staff capable of thoroughly reviewing the data collected under the various statutes.

For these reasons, the Chamber's Board of Directors recommended in November, 1988 that the incoming Bush Administration take certain actions to (1) improve the process for reviewing currently available information on foreign investment and (2) assure the public that such improvements are, in fact, taking place. Such actions can and should be taken without imposing additional reporting or public disclosure requirements on businesses. Specifically, the Chamber recommended that the Administration:

1) Restate that U.S. policy is to continue pursuit of an open investment climate.

2) Require CFIUS to report to the President, the National Security Council, and the Economic Policy Council on a monthly and confidential basis. Such reports should describe the size and nature of foreign investments in the United States.

3) Use current authority, such as the "Exon-Florio amendment" to the 1988 Trade Act, to restrict foreign investments which might jeopardize national security but only as needed.

4) If necessary, request legislative authorization for a full-time CFIUS secretariat in the Treasury Department to carry out the policies and functions described above.

Summary of Pending Legislation and Chamber Position

A number of bills have been introduced over the years that seek to address, in one way or another, problems associated with federal efforts to collect data on incoming FDI. While most of the sponsors profess similar objectives, their proposed legislative remedies vary significantly, and would have significantly different impacts on business and the international investment climate. Some of the more prominent legislative proposals can be discussed as follows:

H.R. 4608/S. 2516 (Lent, R-N.Y. and Exon, D-Nebraska)

Introduced in April 1990, this proposal would permit Bureau of Economic Analysis (BEA) and Census Bureau employees to exchange and use statistical information as deemed necessary by the Commerce Secretary in order to improve the quality of

International Investment and Trade in Services Survey Act (Survey Act) data on incoming foreign investment. It would also prohibit publication or other use of such information in ways that could result in identification of particular establishments or enterprises. Tough criminal penalties (5 years and/or $25,000) for wrongful disclosure or fraudulent procurement of such information would be established. Immunity of collected information from judicial or administrative proceedings would be provided, except as needed to enforce data collection and other related requirements. Finally, the proposal would require a report to Congress on progress of data quality improvements intended under this Act.

Chamber position. The Chamber strongly supports H.R. 4608 and S. 2516 as important steps toward improving the quality of foreign investment data in this country without imposing additional reporting or disclosure requirements. Through strengthened interagency coordination, such quality improvements should bolster public confidence in current U.S. foreign investment policies and alleviate pressures for investment restrictions and other counterproductive proposals.

S. 856 (Murkowski, R-Alaska)

This legislation explicitly authorizes the President or CFIUS to review information on incoming foreign investment collected by the BEA under the Survey Act. It permits interagency "data-sharing" by allowing BEA employees charged with implementing the Survey Act access to Census data, provided they swear to observe Census' confidentiality requirements. It would also permit the President or CFIUS to submit reports and discuss findings with Congress that are based on Survey Act reviews, provided that such reports and findings do not identify specific persons (e.g., companies) who furnished the underlying information. Finally, it would amend the Survey Act to provide additional authority for the "collection and use of information on direct investments owned or controlled directly or indirectly by foreign governments."

Chamber position. The Chamber supports S. 856's underlying objective of establishing a more prominent role for CFIUS in monitoring and reporting on incoming FDI. However, it also believes that amendments are needed to clarify that no additional reporting requirements, or direct or inferential public disclosure conditions, would be imposed on businesses by this Act.

H.R. 4520 (Sharp, D-Indiana)

This legislation would authorize Commerce Department and GAO access to information on incoming foreign investment from numerous other agencies, including the IRS. Within the Commerce Department, it would also authorize BEA access to Census information. CFIUS acceptance of BEA and (in some cases) Census information pertaining to incoming foreign investment would be required, while involved officers and employees of these agencies would be bound to existing confidentiality requirements. The Commerce Secretary would be required to issue an annual report on incoming foreign investment trends, based on information obtained from these other agencies. Also, GAO would be required to issue a report three months later which critiques the Commerce Secretary's reports, as well as current restrictions on public disclosure of incoming investment. The Survey Act would be amended to provide additional authority for the "collection and use of information on direct investments owned or controlled directly or indirectly by foreign governments or persons." In the event the President issues a discretionary report on laws and regulations affecting international investment, H.R. 4520 would mandate disclosure of companies according to whether or not they are 50% foreign controlled. Survey Act respondents' chief financial officers would be held accountable for the timeliness and accuracy of information provided in Survey Act questionnaires, and a ten-fold increase in possible civil penalties for noncompliance would be established. Finally, H.R. 4520 explicitly disavows imposition of additional reporting requirements on business by this Act.

Chamber position. As noted earlier and subject to confidentiality requirements, the Chamber supports the provision of access to BEA and Census data by CFIUS. The

Chamber also has no fundamental objection to GAO access, provided the group of authorized employees is tightly controlled and sworn to protect confidentiality of information. The Chamber also supports Commerce and GAO access to information from other agencies is acceptable, provided such information is not now denied to the public if requested. However, the Chamber is concerned that some provisions in H.R. 4520 would have the effect of mandating direct or inferential public disclosure of specific investors' identities, even though that is not the sponsors' stated intent. There are also provisions which would effectively require CFIUS to take possession of data it has not requested. The Chamber opposes those provisions as written. Finally, the Chamber opposes as overkill holding chief financial officers accountable for data as stipulated in the Act. It supports the bill's explicit disavowal of additional reporting requirements, but again strongly recommends extension of this disavowal to public disclosure.

H.R. 5/S. 289 (Bryant, D-Texas and Harkin, D-Iowa)

The earliest of these initiatives, H.R. 5/S. 289 would impose additional registration and disclosure requirements on foreign investment in the United States (although most debt instruments, such as notes, bonds, debentures and loans, would be excluded). In addition, they would establish civil penalties for lateness in reporting, and criminal penalties, including jail terms, for willful noncompliance. Upon second and subsequent convictions under the Act, forfeiture of foreign investors' U.S. assets, with respect to which such violations were committed, could be ordered. H.R. 5 and S. 289 would also establish a "registry" of collected information, which would be available to Congressional committees and subcommittees; the General Accounting Office (GAO); authorized federal employees, officials and consultants; state government agencies; and other persons performing "qualified research" as defined by the Department of Commerce.

Chamber position. The Chamber opposes additional reporting requirements. The Chamber also opposes availability of collected information to numerous parties as stipulated in H.R. 5 and S. 289; these provisions are tantamount to public disclosure.

It also opposes as extreme overkill possible forfeiture of assets for second offenses. Overall, H.R. 5 and S. 289 symbolize hostility to foreign investment which could have destructive consequences for the U.S. economy if such hostility results in reduced incoming investment. The publicity resulting from the proposed registry has the potential for spawning actions against investors solely on the basis of their national origin and without regard for their legitimate and beneficial activities. Should this legislation become law, foreign investors may perceive significantly increased risk in investing in the United States.

Conclusion

The Chamber applauds the initiatives of Senator Exon, Representative Lent and others who recognize that the best policy toward incoming foreign investment is a policy that is rooted in sound information and respect for property and privacy rights. It is our hope and intention that the U.S. business community, Congress and the executive branch can work together toward a resolution of this problem that enhances, rather than diminishes, the prospects for continued investment and economic growth. This concludes my testimony, and I will be glad to attempt to answer any questions you may have.

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Response To Questions From Senator Hollings
From John Howard, U.S. Chamber of Commerce

1. Question: Do you believe that BEA could publish aggregate data at the establishment level without compromising confidentiality?

   Answer: It depends on how "aggregate" is defined. If "aggregate" simply means the level of foreign investment in a broad industry sector, that would not in and of itself compromise confidentiality. However, confidentiality would be compromised if the information provided permitted direct or inferential identification of specific persons. The appropriate level of specificity, e.g., SIC levels, may vary among different industry sectors.

2. Question: Are you concerned that U.S. receipts from investments abroad were less than payments to foreigners for investments here in 1989 and that this trend is projected to continue?

   Answer: Net earnings on international investment are a component of our balance on current account, which is itself one indicator of the U.S. economy's overall macroeconomic performance and competitiveness in world markets. The negative net receipts you allude to indicate a net transfer of earnings on international investment from the U.S. to other countries. However, they also reflect the existence of substantial foreign investment in the U.S., much of which contributes importantly to the growth of the U.S. economy. While a sustained net earnings outflow would provide a basis for concern if that outflow was driving an overall decline in U.S. wealth and productivity, there is no clear indication that this is happening today.

3. Question: Do you agree with the OECD declaration which calls for multinational corporations to disclose balance sheet information?

   Answer: Most multinational corporations in the U.S. already disclose balance sheet information in their annual reports and (when publicly-held) in filings with the Securities and Exchange Commission, which are also available to the public. Nonetheless, the Chamber opposes any effort which would have the effect of transforming this OECD declaration into additional reporting or public disclosure requirements.

4. Question: In your testimony, you propose that CFIUS be the coordinator of information collected on foreign direct investment. Would the Commerce Department not be a more suitable choice?

   Answer: The data collected by the Commerce Department and other agencies are presented in different formats in response to different questions. CFIUS, as an interagency committee specifically charged with reviewing and obtaining different agencies' views on incoming foreign investment, is therefore more suitably situated to focus on and consolidate the diverse data that are currently compiled by its member agencies. This is particularly important to ensuring that data made available to policymakers on a confidential basis is of the highest quality and reliability. The Chamber does believe that a full-time CFIUS secretariat may be needed for CFIUS to adequately fulfill this requirement.

5. Question: As you know, the Administration opposes BEA sharing information with CFIUS due to concerns about the integrity of the data. Do you think this is a valid concern?

   Answer: Not at all. CFIUS member agencies' officials have high-level security clearances which authorize access to a wide variety of sensitive information bearing on national security, law enforcement and other matters. If these officials can be trusted with this kind of information, they can certainly be trusted with BEA data on incoming foreign investment. As Senator Murkowski has said, if you can't trust CFIUS, who can you trust?

Senator EXON. Thank you, Mr. Howard.

One brief question. Have you and the Chamber taken any position on whether or not the Murkowski proposal should be folded in and be a part of Exon-Lent? Or do you think the Murkowski proposal should stand on its own?

Mr. HOWARD. Well, we believe that the Exon-Lent proposal and the Murkowski proposal combined would provide a significant improvement in the current structure for dealing with incoming foreign investment data collection. We do not see it as an either/or choice. There is some overlap in terms of what the purposes are in those statutes as they relate to BEA and Census.

Ideally, we would like to see the Murkowski CFIUS provisions and the Exon-Lent BEA Census provisions folded together, yes.

Senator EXON. Thank you.

I am not very pleased to welcome Ambassador Richardson.

Ambassador Richardson, I am sure you do not know it, but I have followed your career with a great deal of interest and a great deal of admiration for what you have done and what you have stood for. And in recognizing you, I also want to be the first on Thursday to wish you a happy birthday, to show you how I follow your career. I happen to know it is your birthday tomorrow, because my staff told me about it.

Happy birthday.

I suspect that with the length of the hearing, you were sitting there wondering whether or not you would be here on your birthday. I assure you that will not happen. Please proceed with your testimony.

STATEMENT OF ELLIOT RICHARDSON, CHAIRMAN, ASSOCIATION FOR INTERNATIONAL INVESTMENT

Ambassador RICHARDSON. Thank you very much, Mr. Chairman, for the kind words and the recognition of my birthday. I think, from my own point of view, I would just as soon forget it, but it is inevitable I guess.

In any case, I do particularly appreciate this opportunity to appear before your Committee on behalf of the Association for International Investment. This association, I might add, Mr. Chairman, seems to be rather misunderstood. It is not an organization that represents foreign investors, it is an organization whose members include mainly the U.S. subsidiaries of foreign companies. But it also includes U.S. multinationals, state governments and municipalities in the U.S., and a number of American chambers of commerce in foreign countries.

Our role is to represent what we believe to be the interests of the United States as these interests are affected by the flow of foreign investment. The specific question being addressed by this Committee today is certainly an important one for the United States, which is both the largest host and home country to international investment. And of course the hearing has made clear the Federal Government does currently collect a wide range of economic data on the flow of investment into the United States, principally through the BEA.

Until relatively recently, BEA data was considered adequate as a basis for policy deliberation by members of Congress and others.

With the increased flow of inward investment over the last decade, however, and with the greater role being played by international investment in America's economy, it is certainly timely to reexamine the question of whether or not the international investment data now collected is adequate.

We in AFII, as we pronounce the acronym for the association, certainly agree that policymakers should have whatever data they need on a complete and timely basis. We also believe, nevertheless, that the question of responding to legitimate public policy concerns should not be used as an indirect means of changing U.S. international investment policy.

In my written statement, Mr. Chairman, I urge the Committee to address the data issue by focusing first on exactly what data are now being collected, and then to find specifically what additional data would be useful to Congress and the Administration for purposes of formulating public policy.

Only after this two-step process would they be in a position to adequately address the important public policy issue on which this hearing is focused. My written statement does attempt to pursue that approach, and all I would like to do now, Mr. Chairman, is to quickly summarize my conclusions.

AFII believes that the approach taken in the bill you have introduced, S. 2516, best addresses the public interest at stake. The essential feature of that bill is that it would provide the BEA with access to Census data necessary to improve the quality of BEA's data on all aspects of international investment. How much additional detail seems useful is a matter that can be worked out progressively in the process of data sharing and cooperation between these two bureaus of the Department of Commerce.

The result will be more refined industrial and geographic analyses on the operations of U.S. affiliates of foreign parents. This would be accomplished without jeopardizing the confidentiality of individual sensitive business information and without imposing any new reporting burdens on non-U.S. investors.

Moreover, S. 2516 would allow the BEA to improve the quality of the data it publishes on American direct investment abroad and all U.S. international transactions and services. S. 2516 thus would facilitate the improvement of all the data BEA maintains on inward and outward investment and on international services trade.

I, therefore, urge the committee to report S. 2516 favorably to the Senate and to work for swift passage so that we may have it enacted into law this year.

S. 856, introduced by Senator Murkowski which he discussed with the committee earlier this morning, contains, as you know, two sections. Section 1 would provide for data sharing, and for reasons that I have just stated we do not, of course, oppose this provision although we think that the more comprehensive data sharing provisions in S. 2516 are clearly preferable.

We do, however, strongly oppose section 2 as well as Amendment 1664 that would give CFIUS access to individual BEA returns. We can go into this further if you wish, Mr. Chairman, but, simply stated, CFIUS has no need for routinely receiving that information. It does not want it, and no public policy purpose would be served by giving it to CFIUS. Indeed, as I point out in my written statement, these provisions would in fact undermine the very purposes they seek to attain.

Finally, Mr. Chairman, AFII is strongly opposed to S. 289. That is a matter to which I have previously testified before this committee, and so I will not repeat the substance of that testimony again today.

As set forth in detail in my written statement, S. 289 would give the government no new information. It would, however, widely disseminate data of individual business enterprises and, thereby jeopardize its confidentiality. This would actually have the effect of making less data and less adequate data available to the government.

Thank you, Mr. Chairman, for this opportunity to appear before the committee. I would be happy in my turn to answer any questions you may have.

[The statement follows:]

STATEMENT
of
ELLIOT L. RICHARDSON
CHAIRMAN
of the
ASSOCIATION FOR INTERNATIONAL INVESTMENT
on
Federal Collection of Information on Foreign Direct Investment:
Hearing on
"The International Investment Analysis Act" (S. 2516),
"The Foreign Ownership Disclosure Act of 1989" (S. 289),
and
S. 856
Before the
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
July 19, 1990

I. INTRODUCTION.

Good morning, Mr. Chairman and Members of the Committee. My name is Elliot Richardson. I am the Chairman of the Association for International Investment ("AFII"), on whose behalf I appear before you today.

AFII was founded to represent a partnership of the U.S. affiliates of foreign investors, U.S. multinational corporations, state governments, and American chambers of commerce in a number of European countries. AFII is concerned with maintaining and expanding freedom of international investment in response to market forces. Like U.S. industry generally, we recognize two principal and interrelated facts: that there is a need to attract investors to the United States to meet this country's requirements for investment capital, and that the erection of barriers to international investment would lead to reciprocal action by other governments with serious adverse effects on the ability of American companies to do business abroad.

AFII supports the fundamental policy of the U.S. government, which encourages market-driven international direct investment and which seeks to lower barriers to such investment worldwide.[1] There is widespread concern, however, that some in Congress would like to restrict or prohibit inward international investment at a time when the economic vitality of the country continues to be dependent on a steady flow of international investment.

The question this Subcommittee is addressing is a most important one for the United States, which is both host and home to the world's largest amount of international investment. Although I have had several opportunities to testify on the subject of U.S. international investment policy since AFII was founded early in 1988,[2] it is a pleasure to appear before this Committee today and to lend AFII's strong support for the bipartisan bill introduced by Sen. Exon.

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[1] *See* Statement by the President on International Investment Policy 4 (Sept. 9, 1983) **[hereinafter Presidential Statement]**. *See also Federal Collection of Information on Foreign Investment in the U.S.: Hearing before the Senate Committee on Commerce, Science and Transportation*, 100th Cong., 2nd Sess. 39 (1988) (statement of Robert Ortner, Under Secretary of Commerce); *Disclosure of Foreign Investment in the United States: Hearing before the Subcomm. on Telecommunications, Consumer Protection, and Finance of the House Comm. on Energy and Commerce*, 99th Cong., 2nd Sess. 91 (1986) (testimony of Stephen J. Canner, Dir., Int'l Investment Offc., Treasury Dept.).

II. COMPETING APPROACHES TO ADDRESSING THE DATA QUESTION ON INWARD DIRECT INVESTMENT.

A. Existing Data On Inward Direct Investment.

The United States Government collects a wide range of economic data on inward international investment, principally through the Bureau of Economic Analysis of the Department of Commerce ("BEA"). Until relatively recently, BEA's data was considered adequate for giving guidance to policymakers. With the increased flow of inward investment, however, international investment has come to play a greater role in America's economy. Therefore, it is timely for the Committee to reexamine the adequacy of international investment data from the point of view of the policymaker. We in AFII believe that policymakers should have available complete and timely data on international investment. However, we also believe that the question of responding to legitimate public policy concerns should not be used as an indirect means of changing U.S. international investment policy. These are the considerations before us today.

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[2] *Foreign Direct Investment in the United States and National Security: Hearing on H.R. 4608 and H.R. 4520 Before the Subcomm. on Commerce, Consumer Protection, and Competitiveness of the House Comm. on Energy and Commerce,* 101st Cong., 2nd Sess. (1990) (statement of Elliot L. Richardson, Chairman, AFII); *Hearing on U.S. Policy Toward International Investment Before the Subcomm. on Economic Stabilization of the House Comm. on Banking, Finance and Urban Affairs,* 101st Cong., 1st Sess. (1989) (statement of Elliot L. Richardson, Chairman, AFII); *Hearing on S. 289, "The Foreign Ownership Disclosure Act of 1989," and S. 856 Before the Senate Comm. on Commerce Science and Transportation,* 101st Cong., 1st Sess. (1989) (statement of Elliot L. Richardson, Chairman, AFIA); *Hearing on U.S. Policy Toward Foreign Investment Before the Subcomm. on International Economic Policy and Trade of the House Comm. on Foreign Affairs,* 100th Cong., 2nd Sess. 48 (1988) (statement of Elliot L. Richardson, Chairman, AFIA); *Federal Collection of Information on Foreign Direct Investment in the U.S.: Hearing Before the Senate Comm. on Commerce, Science, and Transportation,* 100th Cong., 2nd Sess. 79 (1988) (statement of Elliot L. Richardson, Chairman, AFIA).

The three approaches to addressing policymakers' data needs are contained in S. 2516, introduced by Sen. Exon, S. 856, introduced by Sen. Murkowski, and S. 289, introduced by Sen. Harkin. Of the three, only S. 2516 is limited to data sharing. While Section 1 of S. 856 addresses data sharing, Section 2 includes a provision that would make available confidential business information to the interagency Committee on Foreign Investment in the United States ("CFIUS"). Finally, S. 289 essentially provides for disclosure of information. Before discussing how these bills would or would not provide more data, however, I would like to review the information already collected on inward direct investment and then discuss what more information policymakers need to fulfill their obligations.

1. Data Currently Collected on Inward Direct Investment.

A little over a year ago, I had the opportunity to meet with the staffs of virtually every Congressional Committee and Subcommittee we knew to be concerned with inward investment. One of the purposes of those meetings was to discuss BEA data in detail and to share with the staff members copies of all the relevant BEA forms. I think it would be fair to say there was almost universal surprise at the extent and complexity of the data being collected.

This should not have been surprising. The United States already has a very good data collection system on inward direct investment. Indeed, a study under the auspices of The Royal Institute of International Affairs noted that the U.S. government "already publishes more complete information on the domestic operations of FOFs (Foreign-Owned Firms) than any other country . . . ."[3] It is worth noting that a significant limiting factor in BEA's current analysis of inward investment is an insufficient number of personnel because of budgetary constraints. We were pleased, therefore, to learn that the President's FY 1991 budget contains a $2.4 million increase for BEA to hire 25 additional personnel to improve international investment statistics. I urge every Member of the Senate concerned about the data issue to support the President's request.

BEA collects three distinct classes of information[4] about inward direct investment:

- balance of payments;
- financial and operating data on U.S. affiliates; and

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[3] D. Julius & S. Thomsen, *Foreign-Owned Firms, Trade and Economic Integration*, The Royal Institute of International Affairs, Tokyo Club Papers No. 2 202. The countries studied include the U.S., Japan, France, the Federal Republic of Germany, and the U.K.

[4] Information collected by BEA is protected from unauthorized public disclosure. Such information cannot be published or released in a way that would reveal the identity of the respondent. Further, the information may be used only for statistical and analytical purposes. Use of an individual company's data for tax, criminal prosecution, or regulatory purposes is strictly prohibited.

-- acquisition and establishment of new enterprises.

Each class of information is designed to provide a different perspective on the role of inward investment in the U.S. economy. Ironically, some of the criticism levelled at BEA's data has been based on a misunderstanding of these distinctions.

a. Balance of payments data.

Balance of payments data basically cover cross-border flows of capital and direct investment income flows between a U.S. affiliate of a foreign parent and that foreign parent or members of that parent group. This information is used to measure the direct investment position of non-U.S. investors in this country and reflects the year-end book value of the parent groups' equity (including retained earnings) in, and net outstanding loans to, their U.S. affiliates. It also assists in the measurement of the U.S. balance of payments.

Capital flows between a U.S. affiliate and its foreign parent consist of equity and intercompany debt flows and reinvested earnings by the foreign parent in the U.S. affiliate. Income flows consist of income payments, such as distributed and retained earnings for the foreign parent, plus payments for royalties and license fees and other service transactions between the parent and the U.S. affiliate.

BEA collects this information through a compulsory quarterly survey of non-bank U.S. affiliates and banks with assets, annual sales, or annual net income in excess of $20 million. There are about 3,000 non-bank U.S. affiliates and 325 banks which are reporters under this survey.

The data generated by this survey is the source for the measurement of the book value of inward direct investment. As of the end of the first quarter of 1990, inward direct investment was $408.7 billion, compared to a book value of $366.9 billion for U.S. direct investment abroad.

b. Financial and operating data of U.S. affiliates.

Financial and operating data of U.S. affiliates include information about the overall operations of the U.S. affiliate, including transactions with its foreign parent. The data basically consist of standard balance sheet and income statement information, such as assets, liabilities, and net worth, sales and capital expenditures, including R&D spending, net income, U.S. income taxes and other taxes paid, interest and dividend payments, and remitted profits. Other information collected includes the value of fixed assets (such as total property, plant and equipment holdings), commercial property, acres of land owned, and mineral rights owned or leased. In addition, information on employment and total compensation paid is provided, as is information on imports and exports. This information is classified by industry and nationality of the ultimate foreign beneficial owner of the U.S. affiliate. Some of this information is available by state. Thus, this information provides an overview of the economic performance of U.S. affiliates of foreign parents in the U.S. economy.

This information is collected through two surveys. The more comprehensive of these surveys is the 5-year benchmark survey -- most recently completed for 1987 -- and a smaller annual survey conducted between benchmark years.

In order to minimize the reporting burden for small firms, BEA has established asset-based, sales-based, and net income-based thresholds to determine the level of detail of survey questionnaires. For the benchmark survey, the most comprehensive questionnaire, the BE-12 Long Form, goes to U.S. affiliates whose assets, sales, or net income exceed $20 million. The less detailed BE-12 Short Form goes to firms with assets, sales, or net income above $1 million but under $20 million, while the smallest U.S. affiliates -- $1 million or less in assets, sales, or net income -- are required to file an exemption claim on which they must provide their name, mailing address, the three exemption level criteria, and country of their foreign parent. For the 1987 benchmark survey, BEA received reports from 8,260 fully-consolidated companies representing 21,895 individual business enterprises.

BEA uses two questionnaires for the annual survey. The more detailed questionnaire goes to U.S. affiliates whose assets, sales, or net income exceed $20 million, while the shorter form goes to those affiliates who fall within the $10 million to $20 million range. For the 1988 annual survey, an estimated 5,100 companies were required to file reports; 3,300 to complete the long form and 1,800 to complete the short form. BEA estimates that the information it receives from the annual survey represents fully 95 percent to 97 percent, in terms of value, of the operations of all U.S. affiliates.

c. Acquisition and establishment of new enterprises.

The third category of information that BEA collects about inward direct investment in the U.S. involves an annual report of acquisitions of existing U.S. businesses by a foreign parent or its U.S. affiliate, or the establishment of a new business enterprise by a non-U.S. investor. Reporting is required if the acquired or newly-established business has total assets in excess of $1 million or owns at least 200 acres of land.

Through these reports, data is collected on the investment outlays made by a non-U.S. investor to acquire or establish the enterprise if the foreign investor was a U.S. affiliate or an overseas foreign parent, and if the transaction was an acquisition or an establishment of a new enterprise. The information collected includes the assets, sales, net income, employment, and acres of land owned in the acquired or established businesses. This information is further broken down by nationality of the ultimate beneficial owner and by the industry in which the business is classified.

2. BEA Data on Inward Direct Investment Is Widely Used.

BEA data on inward direct investment is widely used by the U.S. government, international organizations, state and local governments, private researchers, and the academic community. In addition to using these data for balance of payments and international investment position purposes, the U.S. government also uses this information to develop the national income and product accounts -- the basic measure of the health of the U.S. economy. Thus, the information has broad application at the macroeconomic level and is an essential element in the formulation of U.S. economic policy. At the microeconomic level the information is used to describe and analyze the performance of U.S. affiliates in the economy.

B. What More Do Policymakers Need to Know?

The fact that the U.S. government already has a very good data collection system on inward investment does not mean that the system cannot be improved. To address potential improvements the starting point should be to identify the kinds of information that would be useful to policymakers and that is not already available to members of Congress and the Administration. We can then focus on how best to provide that additional information, taking into account the costs involved.

1. Information Policymakers Need to Have.

As a result of extensive discussion with Congressional staff and Administration officials, AFII believes that a policymaker would want to have available the following categories of information on inward direct investment:

- Scope, Magnitude, and Trends in Foreign Direct Investment.
  - Book value of foreign direct investment in the U.S.
  - Annual flows of foreign direct investment into and out of the U.S.
  - Composition of foreign direct investment position and annual flows.
- International Capital and Income Flows.
  - Actual value of capital flows, by equity, intercompany debt, and reinvested earnings.
  - Annual flows of income including repatriated earnings, reinvested earnings, and interest payments.
- International Trade.
  - Annual value and volume of exports and imports.

-- Competition and Market Structure.

- Market share of individual investment.
- Market share of all foreign investment.
- Degree of concentration in market where individual foreign investment occurs.
- Percentage of foreign ownership in individual investment.
- Profitability of foreign investment.

-- Corporate Finance/Monetary Policy.

- U.S. and overseas sources of finance organized by equity and debt capital.
- Volume of borrowings, by type of lending institution.

-- Industrial Relations and Labor Policy.

- Number of employees.
- Total employee compensation and wage rates for production workers.
- Composition of skill level of production workers.
- Age, race, and sex composition of labor force.
- Union vs. non-union.
- Number of nationals of the foreign investor's principal country of incorporation employed, by managerial and production worker categories.

-- Public Finance.

- Taxes paid to federal, state, and local governments, by type of tax.

-- National Security.

- Extent of control by foreign investor of sources of supply of vital raw materials, technology, or products essential to national security.

-- Effect on U.S. Competitiveness.

- Research and development spending.
- Ownership of patents by U.S. affiliates.
- Payments and receipts for licenses, royalty fees, and other forms of technology transfers.

a. Need for additional detail.

As previously pointed out, BEA already collects data in all of these categories. For some of the categories, however, information on a number of the sub-questions, such as unionization or demographic characteristics of the labor force, is not collected. For all of the categories, the issue is the level of industrial and regional detail at which this information is available. Most of the discussion about the adequacy of BEA data involves this issue, although there has been some interest in adding more questions to the survey form.

Three ways to add further detail to the BEA database are to:

- collect greater industrial detail;
- collect further geographic detail; and
- increase the coverage of the existing survey questionnaires by adding additional questions.

i. industrial detail.

U.S. government agencies collect information from and classify all businesses under the Standard Industrial Classification ("SIC") system. This system involves a two digit major group, a three digit industry group, a four digit industry, a five digit product class group, and a seven digit product group. An illustrative example would be:

Major Group	36	Electronic and other electrical equipment and components, except computer equipment
Industry Group	367	Electronic components and accessories
Industry	3671	Electron tubes
Product Class	36713	Transmittal, industrial and special purpose electron tubes (except x-ray)
Product	3671312	Triodes and multigrid external anodes

The level of detail obviously increases as one moves from a two digit to seven digit category.

At present, BEA data on foreign direct investment is classified by the primary industrial activity of the business enterprise, or principally by industry group, which tends to conform to the three digit SIC classification category. If BEA itself were to collect information beyond this level of detail, it would duplicate the more comprehensive efforts of the Bureau of the Census, which is the U.S. government's principal data collection agency. Such needless duplication would squander governmental resources.

ii. geographic detail.

At present, the only economic variables for which BEA provides regional and state breakdowns every year are for employment, property holdings, commercial property holdings, and acres of land owned. Benchmark years provide information for some additional variables.

iii. expanded surveys.

More questions have from time to time been added to the questionnaires used in all surveys the U.S. government conducts, including BEA's survey of foreign direct investment.

b. Cost of greater detail.

One might be tempted to argue that inward investment data should be collected in the greatest industrial and geographic detail possible, such as the 7-digit SIC level and the county level. This would, however, impose enormous burdens on government and business. Within the manufacturing sector alone, there are 19 two-digit major groups, 140 three-digit industry groups, 459 four-digit industries, 1,446 five-digit product classes and more than 11,000 seven-digit products. There are also 3,107 counties, 131 metropolitan statistical areas, and 186 cities with populations of 100,000 or more.

The balance to be struck is one that will provide sufficiently detailed data for policymakers at reasonable cost to government and business.

We believe the approach taken in S. 2516 will permit data sharing between BEA and Census sufficient to achieve a level of detail to satisfy policymaker's needs. This would enable BEA to match its more highly aggregated statistics with the more detailed database maintained by Census, without burden to business and with a minimum of cost to the government.

2. Information Policymakers Do Not Need to Have.

It is hard to see why policymakers, in order to carry out their responsibilities, need to have access to respondent-specific information. The confidentiality of this information is presently protected under law. As Under Secretary Darby stressed today, this protection is necessary to assure the integrity of the U.S. government's database on inward direct investment as well as the integrity of all U.S. government data collection efforts. Circulating business sensitive information to a wider audience contributes to the risk that it could become publicly available. Such an outcome could be very damaging to the economic and financial interests of the business.

We recognize that one of the principal concerns the U.S. government has about inward investment is the effect it may have on national security. AFII has repeatedly acknowledged that this is a legitimate concern and that the U.S. government should have all the information it requires to meet this concern. However, AFII does not believe it is necessary to develop, in advance, a greatly detailed database for every industry or product that may be remotely associated with national security concerns. This would be very costly to establish and maintain, while its actual utilization would be quite limited.

C. Contending Approaches to Addressing the Data Issue: S. 2516, S. 856, and S. 289.

1. S. 2516: "The International Investment Analysis Act."

As inward direct investment grows, policymakers need to know more about it. The issue is how to balance this legitimate need with the equally important goals of maintaining confidentiality of sensitive business information, safeguarding the integrity of the data collection system, and controlling the costs associated with maintaining this database. We believe that S. 2516 strikes this balance and, therefore, it deserves the Subcommittee's favorable consideration.

a. Data sharing between BEA and Census.

The essential feature of S. 2516 is that it provides BEA with access to Census data necessary to improve the quality of BEA's data on all aspects of international investment. Through this access, BEA can undertake more refined industrial and geographic analyses of the operations of U.S. affiliates of foreign parents. Importantly, this can be accomplished without jeopardizing the confidentiality of individual business sensitive information and without imposing any new reporting burdens on non-U.S. investors. Moreover, this bill would allow BEA to improve the quality of the data it publishes on American direct investment abroad and all U.S. international transactions in services. S. 2516 thus would facilitate the improvement of all the data BEA maintains on inward and outward investment and on international services trade.

i. access to Standard Statistical Establishment List.

Since BEA maintains its database on foreign direct investment at the business enterprise level, it classifies all the business activity of that enterprise in accordance with its primary business activity. It does so regardless of other secondary business activities in which the enterprise is engaged. For example, a company whose primary business is the importation and wholesale distribution of vehicles, but which also assembles vehicles in this country as a secondary business activity, will have all its operations classified under wholesale trade. This level of aggregation obviously tends to overlook a different, and perhaps significant, type of business operation.

In contrast, Census collects and maintains its data on a much more disaggregated basis. Census collects and publishes information on all U.S. businesses at the enterprise level. However, it also collects and publishes information at the establishment level and even at the more refined 7-digit product level. In the example cited above, Census would have separate information about the wholesale and assembly operations of the distinct business establishments within the enterprise, as well as for the business enterprise itself.

S. 2516 would make a useful change in current law to enable Census to share the information it collects at the establishment level with BEA. Specifically, Census would give BEA employees access to the Standard Statistical Establishment List ("SSEL"). The SSEL is a master list of all business entities in the United States, whether U.S. or foreign-owned, which Census collects through its quinquennial and annual surveys. The SSEL includes the name, ownership, address, and location of all establishments within that business entity and information on sales revenue, wages paid, and number of employees. The list also classifies the types of business activities in which these establishments are engaged. Additional information about the operations of these establishments which could also be made available through the SSEL include cost of goods sold, value added, capital spending, R&D spending, and taxes paid. Through this access, BEA would be able to:

-- disaggregate the information it collects on U.S affiliates of foreign investors through its surveys, as well as verify its existing data;

- publish more disaggregated regional and industrial information on the operations of U.S. affiliates of foreign parents; and
- verify the universe of U.S. affiliates of foreign parents that it maintains against a master list of all business in the U.S. to make certain there is no underreporting of foreign investment in the U.S.

ii. confidentiality of business information protected.

As discussed above, a very important concern to the Administration and to the international business community generally is confidentiality of sensitive business information. S. 2516 safeguards the confidentiality of the information provided to BEA and Census by the U.S. affiliates of foreign parents. The employees of both these data collecting agencies already are held to strict confidentiality and non-disclosure requirements by their enabling legislation. These bills make it clear that these requirements are to apply equally to all the information that Census shares with BEA employees.

iii. no added or discriminatory reporting burdens are imposed on foreign investors.

An important feature of S. 2516 is that it would not impose any additional reporting burden on foreign investors or their

U.S. affiliates. The data sharing makes efficient use of information already provided to the government.

b. Report by Secretary of Commerce.

S. 2516 also requires that the Secretary of Commerce report to the Congress on how well the data sharing provided by these bills has improved the quality of the information maintained by BEA on inward direct investment. This report will enable the Congress to determine if further steps to improve this data might be needed.

2. S. 856

Mr. Chairman, I would now like to turn to S. 856 and Amendment 1664, introduced by Sen. Murkowski. As I understand it, the bill purports to do two things. Section 1 of the bill would give the BEA access to data collected by Census. Section 2 would give the President or his delegate -- presumably CFIUS -- access to individual company data furnished to BEA to assist in monitoring the impact of foreign investment and coordinating implementation of United States policy on such investment.

Mr. Chairman, AFII does not oppose Section 1 of this bill but opposes Section 2; however, as I mentioned earlier, we strongly prefer the data sharing method contained in Sen. Exon's bill.

AFII believes that Amendment 1664 and Section 2(b) are both unnecessary and counterproductive. The public policy purposes that these measures seek to serve would in fact be undermined by its enactment.

It appears likely that CFIUS would be the President's delegate for purposes of Section 2(b) of the bill and, therefore, the recipient of individual returns filed with BEA and Census. As the Committee is aware, CFIUS was by Executive Order delegated authority under Section 5021 of the Omnibus Trade and Competitiveness Act of 1988, amending the Defense Production Act ("Exon-Florio"), to review and, if necessary, investigate mergers, acquisitions, and takeovers of U.S. businesses which result in control by a foreign person and which threaten to impair national security. CFIUS also has continuing authority under Executive Order 11858[5] of May 7, 1975, as amended, to monitor the impact of foreign investment in the United States.

However, the efficient functioning of CFIUS would in no way be enhanced by access to an individual investor's BEA and Census returns. Among other things, the Defense Production Act provided

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[5] Exec. Order No. 11858, 40 Fed. Reg. 20,263 (1975), *as amended by* Exec. Order No. 12188, 45 Fed. Reg. 989, *as amended by* Exec. Order 12661, Dec. 29, 1988, 54 Fed. Reg. 779.

CFIUS with the power to compel companies to furnish it the specific information it requires.

CFIUS has stated on several occasions that it neither needs nor desires access to individual returns filed by foreign investors with BEA or Census. Indeed, as Mr. Barreda testified this morning, the Administration is strongly opposed to such a release of confidential information. AFII supports this position.

There are broader public policy reasons why access to individual returns would be counterproductive to the purposes of the International Investment and Trade in Services Survey Act ("IITSSA"). The value of BEA's publications to policymakers and the general public depends upon the accuracy and completeness of the data provided by business firms investing in the U.S. The integrity of such data depends, in turn, upon the assurance given to individual firms that the information they supply will be held in strict confidence and published only in aggregated form to prevent disclosure of business confidential data. If, however, such data, and the records, documents, reports, and so forth in which they are incorporated, is made available on a more widely disseminated basis, the assurance of confidentiality is fundamentally compromised.

In light of these considerations, AFII believes that Section 2(b) of S. 856 is unnecessary and may be prejudicial to the proper functioning of BEA under IITSSA. We therefore oppose that provision.

Section 2(a) of S. 856 would expand the purposes of IITSSA specifically to include the collection and use of information on direct investment owned and controlled directly or indirectly by foreign governments. Under existing law, collection of such information would be undertaken as part of the already stated purpose of the legislation "to collect information on international investment."

For the reasons given above, we believe that Section 2(a) is not necessary for the effective function of CFIUS, and that it would be prejudicial to the work of the BEA. We therefore oppose that provision.

3. S. 289: "The Foreign Ownership Disclosure Act of 1989."

Mr. Chairman, I understand the Committee has an interest in S. 289, "The Foreign Ownership Disclosure Act of 1989," a bill introduced at the outset of this Congress by Sen. Harkin. AFII continues its strong opposition to this bill.

a. S. 289 would not improve the U.S. database on inward direct investment.

S. 289 would not improve the database on inward direct investment. Indeed, much of the information on the operating performance of U.S. affiliates of foreign parents called for by S. 289 is already collected by BEA. The basic difference is that BEA publishes this information in aggregate form and does not disclose information about individual business enterprises, as called by for S. 289.

b. The bill would unfairly burden business.

S. 289 also asks for information which may be impossible to provide. For example, it requires that a foreign investor provide the market value of its investment. Other than the original purchase price, there is no way to determine definitely what the market value of a property or business enterprise might be short of actually putting the property or asset up for sale. The bill, therefore, requires information which would be extremely difficult for most investors to obtain.

A foreign investor with a "controlling interest" -- 25 percent or more -- would also have to incur the costs of developing and providing an English translation of the requested information that is made available in his country. This could be burdensome if the investor does not ordinarily prepare such an English translation.

c. S. 289 is discriminatory.

The public registration requirement proposed in Section 2(a)-(d) would violate longstanding U.S. policy to accord national treatment to foreign investors. The establishment of a public registry for foreign investors, and only for foreign investors, is discriminatory *per se*.

d. The bill would make confidential business information widely available.

Section 2(l)(2) would make the data collected under this bill available to the following groups:

- officials or employees designated to perform functions under the Act, including consultants and persons working under contract;
- committees or subcommittees of the Congress
- officials and employees of the General Accounting Office
- a single agency in each State; and
- persons performing qualified research.

By any measure, these groups represent a large, widely-diffused audience to whom confidential business information would be circulated. Providing this information to such a large audience would erode confidence in the integrity of our statistical system.

III. NATIONAL SECURITY AND FOREIGN INVESTMENT.

Our government has available to it a number of measures to safeguard our national security. The most well known of these measures is Exon-Florio, and I commend you, Sen. Exon, for introducing this legislation. AFII believes that Exon-Florio has worked well. We also commend Dr. Canner and the CFIUS staff for their professionalism in implementing Exon-Florio.

There are, of course, other measures which safeguard the national security. Like U.S. investors, foreign investors must comply with all applicable laws, such as Securities and Exchange Commission reporting requirements and the antitrust laws. Unlike U.S. investors, a number of special restrictions exist for foreign investors' activities in certain key sectors, such as radio and television broadcasting,[6] coastal and inland shipping,[7] air transportation within the United States,[8] and the production and use of nuclear power.[9] The Defense Department has a comprehensive set of guidelines, the Industrial Security Regulation,[10] covering the performance of government contracts involving classified information which limits or bars foreign ownership of the contractor. Section 232 of the Trade Expansion Act of 1962,[11] *as amended by* Section 127 of the Trade Act of 1974[12] and the Reorganization Plan of 1979,[13] authorizes the President to impose restrictions on imports which threaten to impair national security. The International Emergency Economic Powers Act[14] grants the President emergency authority to regulate foreign exchange transactions, transfer of payments between banking institutions where a foreign interest is involved, import or export of currencies or securities, and control or freezing property transactions where a foreign interest is involved. Export licensing for most commercial goods and technical data is authorized by the Export Administration Act.[15] In addition, of course, since 1975 CFIUS has been empowered to review certain foreign investments in this country which, in the judgment of the Committee, might have major implications for United States national interests.[16]

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[6] *See* 47 U.S.C. § 153, 310 (b)(1)-(4) (1982 & Supp. 1987) (discussing restrictions on wire and radio communications).

[7] *See* 46 U.S.C. § 251, 292, 316, 319, 803, 883 (1982 & Supp. 1987) (discussing regulation of vessels in domestic commerce and shipping acts).

[8] 49 U.S.C. App. § 1301(3) & (6), 1372, 1378, 1508(b) (1982 & Supp. 1986).

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[9] 42 U.S.C. § 2133, 2134 (1982 & Supp. IV 1986).

[10] 48 C.F.R. § 201-253 (1987).

[11] 19 U.S.C. Section 1862 (1982).

[12] 19 U.S.C. § 1862-63 (1982).

[13] Reorg. Plan No. 3 of 1979, 44 Fed. Reg. 69,173 (1980), *reprinted in* 19 U.S.C. at 147-54 (1982).

[14] 50 U.S.C. § 1701-06 (Supp. 1987).

IV. U.S. POLICY TOWARD INWARD DIRECT INVESTMENT SHOULD NOT BE CHANGED.

From the birth of our nation until the onset of the First World War, the U.S. was a net borrower in financial markets.[17] Foreign investment was an important element for the success and growth of the American economy in the 19th century. Foreign investors profited; U.S. industry boomed; the American economy expanded.

Following the Second World War, when most other economies were suffering from the war's effects, the U.S. economy was preeminent. U.S. business expanded abroad, giving rise to the term "multinational corporation." All across the globe, American companies invested capital, built new plants, created jobs, and transferred technology in fulfillment of an international business strategy. This was far from a charitable undertaking; indeed, U.S. business reaped great rewards, as did the countries in which such investments were located.

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[15] 50 U.S.C. § 2401 (Supp. 1987).

[16] Exec. Order No. 11,858, 40 Fed. Reg. 20,263 (1975), *amended by* Exec. Order No. 12,188, 45 Fed. Reg. 989, 992 (1980), *amended by* Exec. Order No. 12,661, 54 Fed. Reg. 779, 780-81 (1989).

[17] R. Lipsey, *Changing Patterns of International Investment In and By the United States*, in The United States in the World Economy 476 (M. Feldstein ed. 1988); Congressional Research Service, Library of Congress, Foreign Direct Investment: Effects on the United States 33 (Aug. 1989).

The global economic balance has now shifted from the economic disequilibrium engendered by the Second World War. While the U.S. economy remains the largest in the world, other economies have grown rapidly and America's dominance has been reduced. This is unsettling to those who may have assumed that economic preeminence was an immutable aspect of America and being American. Viewed from this perspective, it is understandable that the recent surge in international investment[18] has prompted fears that foreigners are "buying up America" -- that this country's political and economic destinies are in some way jeopardized.[19]

Viewed from another perspective, however, the current trends in international direct investment reflect confidence in the continuing attractiveness of the U.S. as a place to invest money. The fact that non-U.S. businesses are now in a position to provide a larger share of global investment capital is a natural consequence of the recovery of the industrialized countries from the Second World War. This, in turn, is a reflection of the success of U.S. policies in favor, initially, of European and Asian recovery from the Second World War and, thereafter, in support of an open and expanding global economy. Of course, nothing is an unmitigated good, and the success of our international economic policies is no different. Other countries, rather than sinking into poverty, being swayed by radical ideologies, or becoming military and ideological adversaries, have become tough economic competitors.

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[18] Foreign direct investment in the United States grew 636 percent in the 1980s.

[19] *See, e.g.*, Richardson, *Barriers that should have Britain worried*, The Times (London) (Aug. 14, 1989).

I do not wish to be understood as saying that the rapid pace of international direct investment has brought with it no problems. But the sheer emotional reactions that it generates -- the fact that former enemies, having risen from the ashes, are once again able to challenge us -- tends to confuse the issue. It is worth my stating the obvious: peaceful economic competition is infinitely less threatening than the possibility of war, however remote. And non-peaceful economic competition -- a trade or investment war -- is one of the surest routes to international instability, as the experience of the 1930s demonstrated.

Finally, I would be remiss if I did not touch on the dramatic developments in the Communist bloc which have economic as well as political implications; indeed, that the two go hand-in-hand. A vast new market is opening up to Western capital, just as a vast political territory is opening up to Western ideas. America historically has been the champion of both economic and political liberalization. The erection of protectionist barriers would be a signal to Eastern Europe that we are not putting our money where our mouth is. We would be telling these people that it is acceptable to have an open political system in combination with a closed economy. This would be a serious contradiction, and if I may say so, it would be betrayal of our principles and their trust.

V. CONCLUSION.

Mr. Chairman, as I noted at the outset, the Association for International Investment represents a diverse membership whose otherwise differing views and perspectives converge on two central points. First, policymakers should have available sufficient data on international investment to shape international economic policy. And, second, national security should be adequately safeguarded.

While we are committed to lending our full support to meeting legitimate-public policy concerns, we oppose efforts to use this concern as an indirect means of changing U.S. policy toward international investment. Thus, we support S. 2516, but oppose S. 856 and S. 289. Similarly, we support the Exon-Florio national security review of foreign direct investment, but hope that the range of covered transactions will be narrowed, and greater certainty can be incorporated into the final regulations.

All this is to say that we support traditional U.S. policy toward international investment. We believe, first, that foreign investors make a positive and much-needed contribution to our state and local communities as well as to the national economy; and, second, that freedom of investment abroad, which is so important to U.S. economic and business objectives, cannot be maintained if we start closing doors here at home. Our traditional policies on international investment have served us well, they are serving us well, and we should not abandon them.

I would like to close by thanking the Committee for inviting my testimony.

APPENDIX A

U.S. INTERNATIONAL INVESTMENT POLICY

The objective of the U.S. government in regards to international investment is to promote a policy whose benefits extend beyond the short-term, and reach a great number of people. American policy has traditionally reflected the ideal that benefits from the free-flow of capital fulfill this goal.

American policymakers recognized in the past that an unencumbered flow of capital has far-sighted positive effects which benefit American individuals, as well as the global economy. Policymakers recognized the beneficial effects that capital free-flow, across man-made and natural boundaries, has on economic growth, interest rates, competition, prices, and employment. Since ultimately, directly or indirectly, all Americans are the winners as a result of international investment, traditional U.S. policy should be followed.

A. Traditional U.S. Policy.

1. The Free Flow of Capital Benefits the U.S. and Global Economies.

The United States traditionally has encouraged international investment that flows in response to market forces and seeks to break down barriers to American investment abroad.[1]

> The United States believes that an open international investment system responding to

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[1] *See* Presidential Statement, cited in Statement of Elliot L. Richardson, note 1. *See also* Address by Dep. Sec'y. of the Treasury Robson, cited in Statement of Elliot L. Richardson, note 13.

> market forces provides the best and most efficient mechanism to promote global economic development. Government intervention in the international allocation of investment resources can retard economic growth.[2]

The federal government implements this policy by according national treatment to foreign investors; that is, foreign investors are treated the same as U.S. investors.

The premises of U.S. policy toward foreign investment are:[3]

-- International investment generally results in the most efficient allocation of economic resources if it is allowed to flow according to market forces.

-- There is no basis for concluding that a general policy of actively promoting or discouraging international investment would further the U.S. national interest.

-- Unilateral U.S. government intervention in the international investment process might trigger actions by other governments with adverse effects on the U.S. economy and U.S. foreign policy.

-- The U.S. has an important interest in seeking to assure that American investors abroad receive national treatment.

The U.S. policy toward international investment is rooted in the United States' economic self-interest. This country has maintained an open door policy for international investment not as an accommodation to foreigners or their governments, but rather because of the benefits international investment provides to our economy. The United States has viewed international investment as a means of growth, a way of introducing new technologies and management skills, expanding employment, and increasing productivity. To illustrate the benefits of international investment in the United States, at year end 1987 non-bank U.S. affiliates of non-U.S. firms:[4]

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[2] Presidential Statement, *supra* note 1, at 4.

[3] *See id.*, passim.

- employed 3.2 million Americans;
- had payrolls of $94 billion;
- paid $9.4 billion in U.S. income taxes and $18.6 billion in additional taxes other than payroll taxes; and
- spent $6.2 billion on research and development.

While America's basic policy is to encourage the free flow of capital, there are instances when we make limited exceptions to protect national security or maintain national control of critical elements of the economic infrastructure.[5]

2. The U.S. Has Worked at the Multilateral and Bilateral Levels to Reduce Barriers to Direct Investment.

The U.S. has been in the forefront of efforts to liberalize restrictive investment practices multilaterally -- in the OECD and the GATT -- and bilaterally. This policy was most recently set forth in § 1102(b)(1)(B)(ii) of the Omnibus Trade and Competitiveness Act of 1988, which authorizes the President to negotiate the elimination of barriers to international investment which distort international trade.

At the multilateral level, the U.S. is currently engaged in two mutually reinforcing efforts to further liberalize investment regimes: the inclusion of Trade-Related Investment Measures, or

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[4] U.S. Dep't Commerce, Foreign Direct Investment in the United States 1987 Benchmark Survey Preliminary Results (July 1989) **[hereinafter Benchmark]**.

[5] National security safeguards in the context of foreign investment are discussed in the statement of Elliot L. Richardson, at Section III.

TRIMs, in the Uruguay Round of GATT negotiations, and the initiative to strengthen the now-voluntary OECD National Treatment Instrument to grant national treatment. The U.S. government continues to encourage the World Bank and the IMF to foster an environment favorable to international investment, and to press for liberalization of international investment regimes.

a. GATT negotiations.

The Uruguay Round offers the latest opportunity for the GATT to address the impact of government interference with international direct investment on international trade. This effort is based on the proposition that trade-related investment measures can have the following trade restrictive and distorting effects:

- Prevent, reduce, or divert imports by limiting the sale, purchase, and use of imported products;
- Restrict the ability to export by home and third country producers; and
- Inflate exports from a host country, thereby distorting trade flows in world markets.[6]

The U.S. position on TRIMs was stated in the following terms:

> The trade restricting and distorting effects of investment measures are a function of government actions or policies. The results of these measures are, inter alia, import, export and manufacturing patterns distorted relative to what the patterns would have been absent such government intervention. The ability of an enterprise to respond to developments in the marketplace is impaired. Depending on the "investment measures" chosen, these distortions and rigidities reach beyond the trade of the individual investor which may have agreed to them and even the broader bilateral trade of the two countries. The

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[6] Submission of the United States to the Negotiating Group on Trade-Related Investment Measures 1 (June 1987).

> multiple use of investment measures correspondingly multiplies trade distortions.[7]

The Uruguay Round marks the first time that GATT has considered TRIMs. Its recognition that TRIMs deserve the same liberalization as tariffs and other restrictive measures, which brings the organization's policy into concert with that of the United States, thus may be considered a solid achievement for this country's negotiators.

b. U.S. position in the OECD.

The OECD has begun to focus on a work program which includes: a strengthened National Treatment Instrument; better support for GATT negotiations on TRIMs; and more analytical support to understand positive and negative factors affecting investment flows to LDCs and to encourage a healthier investment climate in developing countries.

The Code of Liberalisation of Capital Movements, of which the U.S. was a principal supporter, covers nearly all international capital movements, including direct investment, securities and non-securitized claims, bank credits and loans, foreign exchange, and personal capital transfers.[8] The Code provides for the progressive abolition of restrictions on capital movements.[9] In particular, the signatories undertake "to treat all non-resident-owned assets in the same way" and "to permit the liquidation of all non-resident-owned assets and the transfer of such assets or of their liquidation proceeds."[10]

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[7] Statement by the U.S. Delegation to the Uruguay Round Negotiating Group on Trade-Related Investment Measures 1 (Apr. 1987).

[8] Code of Liberalisation of Capital Movements (OECD Oct. 1986).

[9] *Id.* art. 1.

The U.S. is also in the forefront of States working to strengthen the OECD's Instrument on National Treatment. The Instrument states that "Member countries should . . . accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another Member country . . . treatment under their laws, regulations and administrative practices, consistent with international law and no less favorable than that accorded in like situations to domestic enterprises . . . ."[11]

c. U.S. undertakings.

At the bilateral level, the United States has negotiated national treatment provisions in numerous Friendship, Commerce, and Navigation treaties and in all ten of the bilateral investment treaties we have signed. The Canada/U.S.A. Free Trade Agreement liberalizes capital restrictions, paving the way for increased American investment in our great friend to the north.

B. Benefits of the U.S. Policy.

1. The U.S. Is a Beneficiary of Inward Investment.

a. Inward investment, like domestic investment, promotes real growth.

Like domestic investment, foreign investment promotes real growth and increases the competitiveness of U.S. industry. It adds to the industrial capacity of the economy by expanding the nation's stock of new plants and equipment. In order to continue to grow domestically and to exploit our comparative advantage in the global marketplace and thereby to increase our international market share, we need to expand our industrial base. This, of course, is in large measure dependent upon the availability of investment capital at reasonable interest rates.

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[10] *Id.* art. 1(b)(i) & (ii).

[11] National Treatment Instrument, Declaration II.1 of the Declaration on International Investment and Multinational Enterprises (OECD June 21, 1976).

We are, moreover, a beneficiary in another way of foreign acquisitions of U.S. enterprises. Just as U.S. shareholders generally receive premium prices as a result of domestic acquisitions, they also receive premium prices from foreign purchasers. These funds, in turn, are usually reinvested in the U.S. economy and help to expand America's industrial base.

b. Inward investment helps keep domestic interest rates down.

At least until the budget deficit is eliminated, or until the American private savings rate is increased, or some combination of those factors, foreign investment will continue to exert downward pressure on U.S. interest rates. Lower interest rates benefit the U.S. economy, encouraging domestic business expansion and the creation of new jobs. A respected economist has estimated that real U.S. interest rates would have risen by 3.5 to 5.5 percentage points in the absence of the surge in foreign investment since 1981.[12] These higher interest rates would have serious adverse consequences for the American economy and would almost certainly precipitate a recession.

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[12] S. Marris, Deficits and the Dollar 44, 140-41 (rev. ed. Aug. 1987).

c. Inward direct investment employs 3.2 million Americans.

Foreign direct investment employs 3.2 million Americans.[13] Some is "greenfield" investment, such as the new Japanese auto plants in Tennessee and Ohio. A larger portion of foreign investment results from the acquisition of existing enterprises. The employment effects of foreign direct investment have long been debated and are the subject of a recent study.[14] Let it suffice to say that measuring the employment effects of any single investment involves a complicated analysis. It involves determining jobs created, saved, lost, and displaced. While greenfield investment represents jobs created, as does the expansion of an acquired enterprise, measuring the other determinants of employment change is more difficult to achieve. Among other things, one must guess at what might have happened in the absence of a particular investment and track employment effects at other businesses.

The manufacturing sector -- which has the greatest concentration of foreign direct investment -- does, however, reveal an interesting contrast in employment trends. While employment overall in U.S. manufacturing declined 6.4 percent between 1980 and 1987,[15] employment by U.S. affiliates of foreign firms rose 37 percent in the same period.[16] This suggests that many blue-collar jobs would have been lost but for foreign investment. One example is Bridgestone's acquisition of Firestone. Several years ago, the once-thriving Firestone plant in La Vergne, Tennessee, faced a shutdown. Almost 400 people had already been laid off. Further reductions were imminent. Bridgestone purchased the company and breathed new life into the plant.

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[13] Benchmark, *supra* note 4, at Table 5.

[14] N. Glickman & D. Woodward, The New Competitors: How Foreign Investors Are Changing the U.S. Economy 1989.

[15] Economic Report on the President 1989 356 (Jan. 1989).

d. International direct investment facilitates the introduction of new technologies and management practices.

In a world where the U.S. is struggling to maintain a competitive position, access to technology from abroad is highly desirable. Along with international investment come new technologies and management techniques which strengthen America's industrial base. International investors, who are generally among the most successful companies in their home countries, are often at the cutting edge of new products, new production technologies, as well as new management methods. One illustration is that research and development ("R&D") spending (as a percent of sales) by U.S. manufacturing affiliates of non-U.S. firms has been above or nearly equal to such spending by all U.S. manufacturers.[17]

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[16] U.S. Dep't Commerce, Foreign Direct Investment in the United States 1980 Table F-3 (Oct. 1983) [hereinafter Foreign Direct Investment 1980]; Benchmark, *supra* note 4, at Table F-4.

[17] In 1980, for all U.S. manufacturers, R.& D. spending as a percentage of sales came to 1.65 percent; for U.S. affiliates it was 1.64 percent. In 1987 the comparable percentages were 2.60 percent and 2.56 percent, respectively. In five of the six intervening years, U.S. manufacturing affiliates had higher percentage figures. Bureau of Census, Annual Survey of Manufactures (various issues 1981-1989 and Statistical Abstract of the States 1989 and Foreign Direct Investment in the United States (various issues 1983-1989).

Department of Commerce data on U.S. affiliates' payments and receipts for royalties and license fees indicate that more technology and other technical support is being shipped into U.S. affiliates than U.S. affiliates are shipping overseas.[18] This data, along with the pattern of R&D spending, suggest that the foreign parents of these U.S. affiliates are intent on building them up to be able to compete more effectively.

e. International direct investment benefits U.S. consumers by increasing competition.

International direct investment stimulates competition, which directly benefits the U.S. consumer through lower prices and a wider selection of goods. In order to compete, industries must cut costs, improve products, and better satisfy the consumer. Without international investment, U.S. consumers would have to pay higher prices for lower quality goods.

f. International direct investment in the United States is the other side of the coin to U.S. freedom to invest abroad.

The U.S. is a major international investor with much to gain from freer investment regimes internationally. Foreign investment is not a zero-sum game: both the international economy and U.S. domestic economy stand to benefit from the growth effects of freer, more efficient capital allocation.

In our negotiations with developing countries with large external debt, the U.S. has emphasized time and again the virtues of an open investment policy that creates a hospitable environment for foreign capital. The overwhelming logic of the U.S. position is evident in the headlong rush of East European countries toward creating market economies and encouraging international investment. Nevertheless, much more needs to be done to encourage a similar result in large parts of the Third World. A retreat from this position at home would undercut our efforts to continue to promote these activities abroad.

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[18] *See generally* U.S. Dep't Commerce, *Survey of Current Business* (various years).

g. International direct investment expands U.S. access to foreign markets.

When non-U.S. businesses invest in this country, they bring with them access to markets in their home countries. This access to foreign markets is also linked to the home market business network of foreign parent companies. It is, therefore, not surprising that non-U.S.-owned manufacturing affiliates in the U.S. exported at a significantly greater rate than all manufacturers. Further, imports by U.S. manufacturing affiliates of foreign firms rose less rapidly than did overall U.S. imports of manufactures.[19]

Some additional points to be made concerning imports of U.S. affiliates include the following:

i. It is almost certain that a considerable portion of the imports by these companies would have taken place in the absence of any foreign direct investment in the U.S. That is, these imports were products intended for distribution and resale in the United

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[19] From 1980 through 1987, imports by U.S. manufacturing affiliates rose by 125 percent as compared with a 143.3 percent increase for all imports of manufactured goods. *See* Dep't. Commerce International Trade Administration, United States Trade Performance for 1988, 84 (Sept. 1989) and Foreign Direct Investment 1980, *supra* note 16 at Table G-3 and Benchmark, *supra* note 4 at Table G-3.

States without further manufacture. Such sales would therefore have occurred in any event, with or without foreign direct investment. This hypothesis is confirmed by data in the 1980 and 1987 BEA benchmark surveys.[20]

ii. While most of these imports, therefore, would have entered the U.S. with or without foreign direct investment, there is also a rising portion of imports to which value is added and jobs and income are generated domestically, especially among U.S. affiliates in manufacturing. In 1980, 53.5 percent of the imports by U.S. affiliates classified in manufacturing from their foreign parents were intended for further manufacture.[21] In 1987, this percentage figure had risen to 76.2 percent.[22]

C. Level and Extent of International Investment.

America is both home and host to the world's largest concentration of international investment. As of April 1, 1990, U.S. investors currently have some $1.35 trillion invested abroad, while foreigners have invested somewhat more than $2.03 trillion in the United States. These figures include private and governmental investments. It should be noted that nonofficial holdings represent the bulk of internationally held assets. In turn, these private investments are divided into two categories: "direct" and "portfolio."[23]

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[20] *See generally* Benchmark, *supra* note 4, at Table G-30 and Foreign Direct Investment 1980, *supra* note 16, at 170. In 1980, $39.3 billion of $47.0 billion, or 83.7 percent, of the imports by U.S. affiliates from their foreign parents were of goods for resale without further manufacture. Further, of the $39.3 billion total, $34.3 billion was imported by U.S. affiliates classified as wholesalers. In 1987, of the $106.2 billion in U.S. affiliate imports from their foreign parents, $73.7 billion, or 69.4 percent, were of goods for resale without further manufacture. Again, the vast bulk of these imports, 90.8 percent, or $66.9 billion of the $73.7 billion, were reported by businesses classified in wholesale trade.

[21] *See generally* Foreign Direct Investment 1980, *supra* note 40, at 170.

[22] *See generally* Benchmark, *supra* note 4, at Table G-30.

1. U.S. Investment Abroad.

a. U.S. direct investment.

For many years, but particularly since the Second World War, U.S. businesses have been making direct investments abroad. These investments currently total $366.9 billion, as they are normally measured, i.e., based on their "book" value (the price paid when the asset was acquired). Since most of the $408.7 billion in foreign direct investment in the U.S. was made recently, its book value more closely reflects its marRet value. Measures of "book" value are to be contrasted with the "market" value of American overseas investment and international investment in the U.S. A recent study by the Board of Governors of the Federal Reserve System found that the market value of U.S. direct investment abroad at the end of 1988 was about $750 billion, compared to an estimated $450 billion foreign direct investment in America.[24] Therefore, while foreign investors have more invested in this country based on

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[23] 15 C.F.R. § 806.7(j)&(k) (1988).

[24] Quoted in address by L. Stekler & G. Stevens, The Adequacy of U.S. Direct Investment Data, National Bureau of Economic Research Conference on International Transactions at 14 (Nov. 3-4, 1989).

"book" value, the United States has more direct investment abroad based on "market" value.

b. U.S. portfolio investment abroad.

Portfolio investment consists of all privately-held assets other than direct investments.[25] These holdings are generally sensitive to interest rate differentials and can easily be transferred internationally. These portfolio investments have constituted about 70 percent of all U.S. private foreign investment abroad through much of this decade.

2. Foreign Investment in the U.S.

a. Foreign direct investment.

Although there has always been inward investment in the United States, it began to surge in the early 1980s.[26] This timing is worth noting. Many people associate the increase in foreign purchases of U.S. assets with the relatively lower value of the dollar since the Plaza Agreement in late 1985. However, the surge in inward investment actually began during the time that the dollar's value was rising relative to foreign currencies, the 1981-1985 period. This confirms the fact that it is the strength of the U.S. economy that has attracted international investors. While inward direct investment in the U.S. has grown, at the end of 1988 it still constituted only a small portion of U.S. wealth. By various measures it was between about 1 percent[27] to 2.2 percent[28] of all U.S. net domestic worth. Thus, in relative terms -- which is the appropriate way to analyze this issue -- international investment in America is fairly small.

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[25] 15 C.F.R. § 806.7(b).

[26] *See generally*, U.S. Dep't Commerce, Survey of Current Business (various issues).

b. Foreign portfolio investment.

Private portfolio holdings of U.S. assets by foreigners consist of a mix of public (including U.S. Treasury notes and debt instruments issued by other governmental authorities) and private securities, deposits with banks in the United States, and similar investments. The largest area of foreign portfolio investment is with banks, followed by holdings of federal government securities other than those issued by the U.S. Treasury.[29]

As of March 31, 1990, portfolio holdings by foreigners exceeded $1.3 trillion. These liquid and interest-sensitive assets have accounted for somewhat more than three-quarters of all foreign investment in the United States throughout this decade.[30]

3. Trends in Investment Flows.

The reasons for foreign direct investment flows are complex and have never been fully explained. At one level, however, it would be fair to say that international direct investment is a part of the process of the internationalization of industries -- a process which has been taking place for about two decades. Almost a decade ago, the late Thornton Bradshaw, comment that multinational business is moving toward the point where national boundaries are largely irrelevant to investment decisions. By this, he did not mean that national boundaries have no significance at all. Rather, Bradshaw meant that national boundaries are taken into account similar to the way state boundaries are when a New York corporation is deciding whether to locate a facility in Louisiana, Arkansas or South Carolina. Europe's move toward the single market is very much a reflection of this point of view. What is happening formally in Europe -- "1992" -- is happening informally around the world.

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[27] Address by Deputy Under Secretary of Commerce Mark Plant, AFII and CBCC conference on Direct Investment in the United States, Tokyo, Japan (Oct. 11, 1989).

[28] AFII extrapolation from Board of Governors of the Federal Reserve System, *Balance Sheets for the U.S. Economy 1949-1988* at 5 (Oct. 1989).

[29] U.S. Dep't Commerce, *Survey of Current Business* (June 1989) at 43.

[30] *Id.*

One way to visualize the flow of international investment capital is to envision the world as a giant relief map. If you pour a bucket of water over the center, the water will settle at the lowest points. Much the same is true of capital, with the difference that the equivalents of the lowest points are the places offering the most favorable balance of risk and return.

Foreign investment in the United States may also be visualized as a fulfillment of internationalization strategy being pursued by companies in other countries. Just as the U.S. companies transformed themselves into multi-national corporations in the 1950s and 1960s, foreign companies are doing so today, considering factors such as risk diversification, proximity to markets, economies of scale, and so forth. If anything, this is a consequence of the globalization of markets and the internationalization of industries.

As previously noted, the increase in foreign investment in the United States indicates that the international business community believes that our economy will continue to be an attractive market for investment.

4. Countries Investing in the U.S.

All OECD countries have businesses with investments in America. By far, the British are the largest investing nationality in this country, with $121.4 billion or 29.7 percent of total direct foreign investment in the U.S. as of the end of the first quarter of 1990. American investment currently constitutes about 40 percent of all foreign direct investment in the United Kingdom.[31] The Japanese are the second largest investing nationality, with $73.4 billion, comprising 18 percent of total foreign direct investment. By way of contrast, in 1989 American investors comprised 50.5 percent of foreign direct investment in Japan,[32] although it should be noted that foreign direct investment in Japan is quite small overall. The Dutch are the third largest investing nationality, with $58.6 billion or 14.3 percent of total foreign investment in the U.S. American investment of $15.37 billion comprised about one-third of the total foreign direct investment in The Netherlands in 1988. Finally, in fourth place, are Canadian investors, with $30.4 billion or 7.4 percent of the total foreign investment in the U.S. This compares with American investment in Canada, which comprised 68 percent of its total foreign investment in 1989.[33] These figures also indicate that the U.S. share of foreign direct investment in each of the countries mentioned is larger than the share of that country's foreign investment in America. What is clear from this recital of the U.S. international direct investment position is that foreign investment is a two-way street.

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[31] Telephone interview with the Embassy of Great Britain (June 11, 1990).

[32] Telephone interview with the Embassy of Japan (June 11, 1990).

5. Sectoral Investments in the U.S.

Just as foreign direct investment in the U.S. stems from many countries, some 100 in all, foreign investment is also widely distributed on a sectoral basis. During the 1980s, manufacturing has been the recipient of the largest dollar amount of direct investment. From 1987 through 1989, for example, the manufacturing sector received half of all foreign direct investments made during this period.[34] Within manufacturing there is also a widespread distribution by national ownership among the foreign with the overall direct investment position of countries in the U.S. except that Britain, The Netherlands, and the FRG rank ahead of Japan.

D. BET: A Case Study of the Benefits of Foreign Direct Investment in the U.S.

The benefits of foreign direct investment to the U.S. economy have been reviewed in general terms. However, a case study of these benefits is instructive: that of BET, the British-based international supplier of support services to industrial, commercial, and public sector customers.

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[33] Telephone interview with the Embassy of Canada (June 11, 1990).

[34] *See generally* U.S. Dep't. Commerce, *Survey of Current Business* (various years).

With a market value of two billion pounds sterling, BET is one of the 100 largest non-financial companies in Europe. It is also one of the U.K's top 50 companies and one of the top ten employers. BET's operations in North America are mainly in the United States.

BET was a relative latecomer to the U.S. market, making its first acquisition in 1981. In 9 years, BET's investments in the United States have grown to $865 million in U.S. revenues, employing 15,300 Americans in 41 states. Through a program of non-hostile core business acquisitions and organic development of these companies, BET has made great inroads into multiple sectors of the service industry and has assumed a leadership role in them.

BET is an excellent example of a good corporate citizen. The company operates in strict adherence to regulatory and legislative requirements. Wherever they operate, they have an outstanding reputation for complying with environmental, labor, and safety regulations.

BET's success in investing in the U.S. has created substantial benefits for the national, state, and local communities in which BET operates. At a national level, the federal government benefits from tax revenues both on BET's corporate income and on payroll taxes from its 15,300 employees. At the state level, BET's employees pay substantial income taxes as well as sales taxes to contribute to state coffers. BET's entry into this country has also made a significant contribution to residential real estate and other aspects of the local economy.

BET has generated considerable praise from political leaders such as Senator Bob Graham, Governor Bob Martinez, and Representative Edolphus Towns.

Since BET's U.S. operations are collectively a subsidiary of a leading international corporation, the exchange of expertise between the U.K. and U.S. is significant. In this era of growing global economic cooperation, the benefit of this aspect of foreign investment to the U.S. economy should not be underestimated.

Senator EXON. Thank you, Ambassador Richardson. Just one brief question.

You would not favor incorporating the Murkowski provisions into the measure before us?

Ambassador RICHARDSON. No, I would not, Mr. Chairman. The reasons for that were very well set forth in the testimony you received this morning from Mr. Barreda of the Treasury.

Basically, the reason is that CFIUS' role is to examine a particular proposed acquisition. It can and does gain access to all the data it needs bearing on that transaction. It can get much more data than is routinely reported on any form by a reporting company to BEA or to the Census Bureau.

So merely to provide for access to BEA and Census data would not give CFIUS any information that it cannot gain directly, but it would at the same time establish the undesirable precedent of sharing BEA and Census data which in general can only be obtained, on an adequate basis, through the understanding that it will not be turned over by BEA on the Census Bureau to other people.

Senator EXON. Thank you.

Professor Graham, we are very pleased to welcome you.

STATEMENT OF EDWARD GRAHAM, PROFESSOR, INSTITUTE OF INTERNATIONAL ECONOMICS

Mr. GRAHAM. Thank you, Mr. Chairman. I am very happy to have the opportunity to appear before this committee. My interest is as an analyst who actually uses the data generated by the U.S. Government to assess the impact of foreign direct investment on the U.S. economy. As the last witness, I will abbreviate my remarks so as not to repeat elements that have been stressed by other witnesses.

To an analyst, by far the most important element of the bills before you is the crosswalk provision to enable cooperation between the Bureau of Census and the Bureau of Economic Analysis. In my written statement I go into some of the details of exactly why this crosswalk is so desirable from an analytic point of view, and I won't repeat these details here.

What I would like to do now is simply to note that I believe Senator Exon's bill, reflecting the administration's position, really does not go quite far enough in terms of establishing this crosswalk. My own reading is that it gives the Census Bureau a very large degree of bureaucratic control over the amount and type of data to which the Bureau of Economic Analysis might have access.

These two bureaus, although both part of the Department of Commerce, have had a long history of rivalry that has often been marked by acrimony. Therefore, to make them unequal partners in the cooperative exercise is for bureaucratic reasons not desirable.

On this matter, I would simply like to commend to you and to the committee the provisions in H.R. 4520 which enable cooperation between the two agencies as does this bill; but importantly, H.R. 4520 provides for a means of impartial arbitration of disputes that might arise between the two agencies. I am certain that such disputes will occur, and I believe that in the Exon bill such a similar provision would be highly desirable.

One other thing about this bill is that, as I understand matters, the Administration intends to establish the first crosswalk on the generation of employment data. This is a very good start, but we in the analytic community will ultimately wish other data series to be generated as well.

I would have to echo the remarks of Ambassador Richardson and others on Senator Harkin's bill. This bill calls for greater disclosure of information by foreign investors but does not call for collection of data not already collected by the Bureau of Economic Analysis. In fact, the data that would be collected under Senator Harkin's bill are virtually the same as the BEA data, and * * * suffers from exactly the same analytic deficiencies. So, from an analytic point of view, there is little reason why this bill would help us to understand the * * * of foreign investment.

There may, however, be other reasons for greater disclosure, and as an analyst I do not feel qualified to comment on these.

There is one last point that I would like to touch on. In the course of my own research I have looked at the data gathering procedures of other countries. On this basis I would have to take issue with certain of Senator Murkowski's remarks earlier in the morning which suggested that in other countries provisions for data sharing between statistical agencies and regulatory agencies are quite commonplace.

The country whose procedures I know best is the United Kingdom. In the United Kingdom, authority not unlike that granted to the President under Exon-Florio is held by the British Monopolies and Mergers Commission, the MMC.

In conducting investigations of foreign acquisitions of British firms, the MMC has power to require submission of certain information to relevant officials; in this regard, the MMC's powers are similar to those of the CFIUS, which also has subpoena power. MMC officials do not, however, have access to company records submitted to the Central Statistical Office, the British equivalent of Bureau of the Census combined with the foreign direct investment gathering functions of the Bureau of Economic Analysis.

Equivalent officials in Germany do not have such access, either.

In Japan, if a foreign investor requests that information submitted to the Government for statistical reasons be held confidential, that request is honored. That is to say, contrary to what we have heard, if a foreign investor in Japan requests confidentiality, information submitted to the Japanese government for statistical purposes will not be used, say, by MITI, or by the Ministry of Finance, or by anyone else for industrial policy and planning purposes.

Thus, my investigations suggest that what happens in foreign countries is not quite that which was suggested earlier in the morning. There may be reasons for greater disclosures of information pertaining to foreign investors, but these reasons simply do not include "Other countries do it so we should, too."

Thank you very much, Mr. Chairman, and I, too, will be very happy to entertain any questions that you might have.

[The statement and questions and answers follow:]

Statement of Dr. Edward M. Graham, Research Fellow, Institute for International Economics, Concerning Legislation Affecting Federal Information on Foreign Direct Investment in the United States

Senate Committee on Commerce, Science, and Technology

Thursday, July 19, 1990

I am very happy to be able to testify to the Senate Committee on Commerce, Science, and Transportation on bills pertaining to data on inward foreign direct investment, and I wish to thank the Chairman and Members of the Committee for giving me this opportunity. My interest in these bills is as an analyst who uses data generated by the U.S. Government to assess the impact of this investment on the U.S. economy. As my coauthor (Paul Krugman) and I noted in our recent book Foreign Direct Investment in the United States, the data now generated and published by U.S. Government agencies on foreign investment can be improved. I believe that proposals contained in bills before this Committee are very useful to the end of enabling needed improvements to be implemented. My main criticism of these proposals is that they do not go far enough in some directions.

To an analyst, the most important improvement to be enabled by provisions of the proposed bills is to enable the Bureau of the Census and the Bureau of Economic Analysis (BEA) to work together to produce better data on foreign investment activities disaggregated by sector. Although a number of Federal agencies generate data on foreign direct investment in the United States, data generated and published by the BEA are by far the most useful and widely used for analytical purposes. A significantly restrictive feature of these data is that they are aggregated by enterprise. That is, all data pertaining to the activities of one particular firm are aggregated together, and that firm is treated as one economic entity. This may at first sound sensible, but in practice it can lead to difficulties. The most pronounced difficulty occurs if one wishes to look at a specific sector or industry where foreign firms operating in that sector or industry are diversified. BEA puts all data pertaining to a diversified firm into the industry category in which the firm conducts the largest part of its business. For example, the U.S. subsidiaries of the large Japanese automotive firms are both importers and manufacturers. The U.S. subsidiaries of both Toyota and Nissan currently sell in the U.S. more imported vehicles than domestically assembled ones. BEA data reflecting the activities of these two firms thus would be classified as "wholesale trade" rather than "transportation", and the analyst who used BEA data to gauge the impact of foreign direct investment on the U.S. automotive sector would get a misleading picture of what is actually going on.

The Bureau of the Census, by contrast, holds data pertaining to the activities of individual establishments, e.g., single factories or warehouses. But Census has no systematic way of knowing whether these establishments are under foreign control. By cooperating, Census and BEA could develop accurate statistics giving a much better picture of the extent of foreign involvement in economic activities in specific domestic American sectors.

Senator Exon's bill embodies the Administration's proposals to implement the desired Census-BEA cooperation. As suggested just above, this cooperation is highly desirable, but in my view certain of the details of the Administration's proposals could bear improvement. In particular, the Administration would give the Census Bureau a large degree of control over the amount and type of data to which BEA might have access. Alas, these two bureaus, although both part of the Department of Commerce, have a long history of rivalry that has often been marked by acrimony. Cooperation between the two will not come easily under the best of circumstances, and to make them unequal partners in the cooperative exercise is, for bureaucratic reasons, not to create the best of circumstances. On this matter, I would like to commend to the Committee provisions in Representative Sharp's bill HR4520 to enable cooperation between the two agencies which attempt to make them equal partners and, importantly, to provide for a means of impartial arbitration of disputes between the two agencies that invariably will arise.

The Administration would have the two agencies start their cooperation by generating a reconciled data series on employment by foreign firms in the United States. This represents a good start, but we in the analytic community would ultimately need numerous other data series to be generated in order to thoroughly evaluate the role of foreign direct investment in the United States. Further cooperation between the two agencies could produce data series on value added, research and development expenditures, value of shipments, value of imports and exports, and new capital expenditures by U.S. affiliates of foreign firms, disaggregated by sector. All of these series would be desirable from an analyst's perspective. There is nothing in the Administration's proposals that prevent the future creation of such series. But nonetheless it should be made explicit that the goal of the cooperative exercise is ultimately to produce a number of reconciled data series and not simply a single series on employment.

Senator Murkowski's bill also enables Census-BEA cooperation on the preparation of data series pertaining to direct investment in the United States, but it contains another provision that would allow relevant officials in the Executive Branch access to BEA records on foreign investors for purposes of carrying out Exon-Florio investigations if the foreign acquiror of a U.S. firm were to be an agency or under the control of a foreign government. For reasons that are well spelled out in the statements of representatives of both the Treasury and Commerce Departments before this Committee, such access by the CFIUS or other relevant officials is not necessary to the carrying out of Exon-Florio investigations. As I shall elaborate below, the argument that similar access is routinely granted to governmental bodies having the role of the CFIUS in foreign governments (and therefore the United States Government should have such access) does not stand up on the basis of the facts, at least not when one examines other industrial democracies.

Turning now to Senator Harkin's bill, this bill calls for the collection of new data, in the sense that foreign investors would have to meet new reporting requirements they presently do not face. The information in fact would be little different from that from certain of the enterprise level data already collected by BEA. Given this and the fact that the data collected under the Harkin bill would suffer from exactly the same deficiencies as the BEA data, one wonders why a second reporting requirement is deemed necessary. It is true, of course, that data collected under the Harkin bill would be more widely disclosed than that collected by BEA, and I am sure that Administration representatives are glad to tell you why this might have a chilling effect on foreign investment in the United States. As an analyst, I am less worried about the possibility of a chilling effect than about whether the new data would help us better to understand the implications of foreign investment. I must honestly say that I do not see a better understanding resulting from these data, at least not one on the order of that which would result from Census/BEA cooperation.

There are merits for greater disclosure of company operating data. Indeed as a free market economist I join others in my profession in believing that the "magic of the marketplace" works best when participants in the markets are well informed. This would argue for wide disclosure of information about individual firms, and market efficiency reasoning lies behind the Security and Exchange Commission's Form 10K reporting requirements for firms listed on stock exchanges. The case could be made that all firms, and not just firms meeting SEC criteria, should regulary disclose Form 10K level information. But this reasoning holds for all firms, and certainly not just for ones under foreign control. To subject foreign-controlled firms to disclosure requirements not applied to domestically-controlled competitors would smack of discrimination against the former. It would, among other things, be contrary to U.S. goals of seeking a strengthened National Treatment Instrument in the OECD. It could prompt foreign governments to take countermeasures aimed at local subsidiaries of U.S.-controlled firms. Thus, while greater disclosure requirements applied universally would, in my estimation, be a good idea, such requirements targeted exclusively on foreign-controlled firms would be a step in the wrong direction.

I have heard it argued that the measures called for in Senator Harkin's bill, or that limited access to BEA data by CFIUS members as called for in Senator Murkowski's bill, simply would require foreign investors to do in the United States what U.S. investors already have to do in foreign countries. To an extent, this is correct. All major countries require that foreign controlled subsidiaries must submit data to the government for statistical purposes. But the United States already requires this; data submissions by foreign investors to the BEA under the International Investment and Trade in Services Survey Act are mandatory. In all five of the G5 nations, data thus submitted are held for statistical purposes, and are not subject to the level of disclosure that would be permitted under the Harkin bill. Indeed, in one country whose procedures I studied in some depth, the United Kingdom, authority not unlike that granted to the President under the Exon-

Florio amendment is held by the British Monopolies and Mergers Commission. In conducting investigations of foreign acquisitions of British firms, this Commission has power to require submission of certain information to relevant officials. But, interestingly, these officials do not have access to company records submitted to the Central Statistical Office (the British equivalent of the Bureau of the Census and the BEA combined). Officials of the Commission I interviewed were familiar with the situation in Germany, and they indicated that relevant German officials did not have such access either. The British were less familiar with the situation in France, but their impression was that the same lack of access holds true there as well.

Thus, while there may be reasons for disclosure as provided in Senator Harkin's bill, or reasons for CFIUS access to BEA or Census data as proposed in Senator Murkowski's bill, these reasons simply do not include "other countries do it".

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August 7, 1990

Senator Ernest F. Hollings, Chairman
United States Senate on Commerce, Science,
    and Transportation
Washington, DC 20510-6125

Dear Senator Hollings:

Thank you for giving me the opportunity to respond to questions posed by you and by Senator Exon per your letter to me of July 27. The questions are very probing ones, and I will try to provide succinct but complete answers.

(Responses to questions from the Chairman)

1. Does foreign direct investment lead to import substitution?

This issue has been studied at some depth with respect to US outward foreign direct investment (FDI), where the question becomes: Does this FDI lead to substitution for US exports? The answer seems to be that FDI can be either trade substituting (an increase in FDI leads to a decrease in US exports) or trade complementing (an increase in FDI leads to an increase in US exports). Which effect dominates seems to depend upon both the industry and the vintage of the investment. With respect to the vintage effects, newly established subsidiaries in overseas markets tend to lead to trade substitution for final product but to increases in US exports of components and intermediate goods (and hence to some offsetting complementarity). Increases in FDI by firms that have been long established overseas tend to lead to substitution of locally produced components for imported ones, and sometimes even to exports of final products. Standard theory holds that the affected products are ones that US producers can no longer produce competitively; hence, there likely is no long term effect on US trade. With respect to the industry-specific effects, the important thing to note is that some firms have integrated global operations and in doing so have created specialized plants in various nations. The net effect can be that an overseas subsidiary of one of these firms simultaneously imports and exports from the United States, and so the effect of the investment can truly be simultaneously trade substituting and trade complementing. Standard theory would hold that the firm will export (from the US) products that can be competitively manufactured in the United States and import those products that are more competitively manufactured elsewhere.

The question then is, do these results hold for FDI in the United States. Here, to be honest, no recent comprehensive studies have been done that I know of. But I would expect the results to hold. Many US subsidiaries of foreign firms (and especially subsidiaries of recent vintage) do indeed produce final products that the parent firms formerly imported into the US from their home nations, but do so using imported components. These investments then are simultaneously substitutes and complements for imports, where the latter is a partial offset to the former. Over time I would expect these subsidiaries to substitute locally made components for imported ones, and hence for the investments to become more import substituting. Also, I would expect that many of these subsidiaries would increase their export activities, and in this sense the investments would also be trade complementary. But long run specialization of US subsidiaries, so that they simultaneously import and export different types of final products, is not to be ruled out.

The bottom line thus is: FDI in the United States is likely to act as both a substitute and a complement for imports, as is FDI from the United States. It is impossible to tell which effect in the long run is dominant. In the short to medium run, the import substitution effect is likely to be dominant.

2. In your research did you collect information on the record of foreign affiliates in the areas of environmental compliance, workplace conditions, sex discrimination, etc?

We did not, for two reasons: (1) we (my coauthor, Paul Krugman, and I) did not feel that we had the time or resources to do this type of work properly, and (2) we did not feel particularly well qualified to work in these areas. These are very important issues for which, alas, there is no comprehensive work that has been reported of which I am aware.

3. The vast majority of foreign investments are portfolio investments. Do we need additional information on portfolio investments?

I have done only one study requiring information on portfolio investments (and other categories of foreign investment not classified as direct investment); this study was published in Volume 2, Number 3 of The Marcus Wallenberg Papers on International Finance, a copy of which is attached. For purposes of this study, the information reported by the Bureau of Economic Analysis was perfectly adequate, and indeed I was struck by the detail of information that is reported. Two qualifying remarks are: (1) this study was quite "macro" in its orientation, and no highly disaggregated information was needed by me to do it, and (2) I simply do not know the methods used by the Commerce Department and other agencies to collect this information at the level of detail I know the methods and conventions employed to collect information on FDI.

My sense is thus that the priority at the moment should be to improve the BEA data on FDI, as per the objectives of the Exon-Lent and the Sharp-Johnson bills.

4. As you know, U.S. investments abroad are thought to be worth $200-700 billion more than their book value. If the were valued at the market, the U.S. might not be a net debtor. Do you have any figures on this?

I have no independent assessment of the market value of US assets abroad. My sources are probably the same as yours, e.g., the chapter by Michael Ulan and William Dewald in Dorn and Niskanen, Dollars, Deficits, and Trade (Boston: Kluwer Academic Publishers, 1989). I do believe that Ulan and Dewald are right in asserting that if US assets abroad were to be revalued at market rates, the US would still be a net creditor in terms of direct investment position; but even so, I don't think that the US would be a net creditor on overall investment position by anyone's calculations. Bolstering this, as analyzed in Fred Bergsten and Shafique Islam's forthcoming IIE book America as a Debtor Nation, there are some discrepancies on the inward side that might understate foreign claims on the United States by as much as $200 billion.

Whether the US is or is not still a net creditor on direct investment is an interesting question, but there is no doubt that the US is continuing to pile up debt to other nations at a rapid rate.

(Questions from Senator Exon)

1. Your book on foreign investment seemed to identify Japan as away from the pack in foreign investment policies and practices. Are Japanese policy and practice different?

Overt Japanese policy, in terms of openness to inward FDI, does not seem to be greatly different from that of the United States or other industrialized nations. In practice, because the ratio of value-added by local subsidiaries of foreign controlled firms to GNP is so much lower in Japan than in other industrial nations, there must be differences. Some of these are well documented, e.g., the ownership patterns of firms belonging to Japanese keiretsu make it very hard for outsiders to acquire these firms. Some seem to be very subtle, e.g., Japanese often just won't sell business assets to foreigners for reasons that seem to have to do more with culture than with economics.

One must note, however, that during the 1960s and 1970s, when US multinationals were rapidly expanding their overseas networks, there did exist significant official barriers to entry to Japan that have since been removed.

One must also note two points that pull in somewhat different directions. First, as Japanese spokespersons are quick to emphasize, relatively few US firms have tried particularly hard to break into Japan since the barriers have come down. (But then, during this time US firm generally have slowed the expansion of their overseas activities.) A number of US firms that have tried to do business there via FDI have been very successful, so the barriers are less than total. Second, during the past year, a number of US firms with successful operations in Japan have sold these off, most often to Japanese investors. According to reports in the US business press, these US firms were under no pressure from Japan to exit, and mostly they seem to have been motivated by the opportunity to take a one shot capital gain.

2. Do you have any concern that America is selling away its long-term prosperity?

Yes, in a sense, I very much do have such a concern. But the problem in my view is not the selling of US assets to foreigners per se. Rather, the real problem is the failure of the United States to generate the productivity increases needed to increase the future standards of living of its citizens. This failure in turn is partly a result of the United States failing to invest enough, and this is a result of inadequate domestic savings. Net foreign investment into the nation is equal to the shortfall between domestic savings and domestic investment, and in this sense foreign investment in the United States can be correctly viewed as a symptom but not a cause of the problem.

Indeed, by bringing new capital, management techniques, and technologies to the US economy (and more specifically to the manufacturing sector), foreign direct investment in the United States in my view acts as a partial cure to the problem. That is, it serves to raise the level of productivity in the economy. This cure is neither complete, nor does it come without a price. But until we get a better grip on such problems as low domestic savings, low performance of the primary and secondary educational systems, and short-term thinking by management, we would shoot ourselves in the foot to close the door to this investment. Incidentally, even once we get a firm grip on these problems, FDI likely will continue to enter the United States. But under these circumstances I doubt that we would any longer will think of this investment as posing any threat at all to our long run prosperity, but rather as a phenomenon that was consistent with rising productivity and higher standards of living (as it now largely is viewed in Europe).

A related point needs to be stated: We of course do not want to mortgage our future, as to some degree we are doing at present. But until we solve our current account deficit problem, we will continue to need inflows of foreign capital. And as long as this holds true, it is preferable that the capital come in the form of FDI rather than shorter term or portfolio capital. FDI, in contrast to other types of capital inflow from abroad, is relatively permament; foreign investors cannot withdraw their FDI in a moment of panic, as they can their funds invested in short term securities. FDI, as just noted, brings with it productivity increases, not something that can be claimed for other forms of foreign investment. Ideally, we would like not to be dependent on any form of foreign investment. But at the moment we are dependent, and as long we fail to correct the roots of the dependency, dependency on FDI is preferable to dependency on other forms of financing.

Again, let me thank you for the opportunity to answer questions posed by you and by Senator Exon. If I can be of any further assistance, I shall be happy to do whatever I can.

Sincerely yours,

Dr. Edward M. Graham
Research Fellow

Attachments 1/

1/ The attachments were not reproducible.

Senator EXON. Thank you. I have a question. I would like anyone on the panel to respond to this question as briefly as possible.

There is a concern that foreign owners use source pricing to avoid paying significant amounts of U.S. taxes. What is your view of this commonly-held conception, or are foreign companies carrying less than their fair share of the tax burden?

Mr. MENDELOWITZ. Senator, that is really an empirical question as to the extent to which they use transfer pricing between the parent company and the U.S. subsidiary to shift profits overseas. The General Accounting Office is currently undertaking several studies of that issue in response to requests from several House committees, and when those studies are done I believe we will have answers to the question that you posed.

Senator EXON. Do any of the other members of the panel have any comment on that question?

Mr. GRAHAM. I just might note that this concern has arisen in the context of a number of foreign countries, particularly Latin American countries, and that the theoretical possibility that multinational firms use transfer pricing to avoid host nation taxes, as Mr. Mendelowitz suggests, certainly is there. The issue is, do firms really thusly avoid taxes, and this is an empirical issue that I certainly applaud the efforts of the GAO to shed light on.

Mr. MENDELOWITZ. Senator, I might point out that this is a good example of how GAO access to original data enables us to meet the needs of the Congress. We have access to broad ranges of data, including individual tax returns and corporate tax returns. It is because we have access to the data when Members of the Congress like yourself pose a question such as, "Have foreign companies been using transfer pricing between the parent and the subsidiary to avoid U.S. taxation?" that we can go in, get the original data and give you the answer. That is, I think, a good example of why we would like to have the same kind of access to Census and BEA data regarding foreign investment that we have with respect to individual and corporate tax returns, highly classified national security matters, and for that matter individual bank data.

Mr. GRAHAM. Mr. Chairman, could I amend my statement to read that foreign governments have accused specifically U.S. multinationals of this practice? The additional point that I wish to make is that the fact that foreign governments can level charges of tax avoidance against U.S. based firms have done so illustrates the danger of approaching this issue on an ad hoc basis without undertaking the necessary empirical research.

Senator EXON. Thank you.

Ambassador Richardson, in your letter to the President's Chief of Staff, John Sununu, you wrote that the Exon/Florio process has been politicized. There have been well over 300 filings and only ten full investigations, with one instance where the President ordered disinvestment. Do these statistics not refute any charge of politicization of this particular act, or could you clarify what you were driving at with that term?

Ambassador RICHARDSON. I think the context that I used, Mr. Chairman, makes that fairly clear. Certainly, the bill, I believe, has been very well administered, is well serving the purpose that you had in introducing it and in steering it through the Congress.

What I was addressing was the problem arising out of the exertion of large-scale pressure on CFIUS, acting in an administrative capacity through a deliberative process, seeking to reach the best judgment it can on what are in some cases very closely-balanced issues.

It is troublesome, from the standpoint of somebody in the position of Dr. Canner and his colleagues, when 100 or more Members of Congress express a strong view on one side of a pending case. How much weight should they give to those views? My concern was that they be viewed essentially as an administrative agency exercising a quasi-judicial function. That led me to express my worry about "politicization."

In fact, I think they have exercised their judgment, as far as I can tell, in a wholly-conscientious way without being unduly swayed one way or the other by such communications, but I thought it was useful to express concern about it in the hope that others, including Members of Congress, would see that they might be complicating the process through that kind of communication.

Senator EXON. I think you bring up a good point.

As an author of the bill, you maybe cannot imagine—or maybe you can, since you are knowledgeable in the Government—the number of people and individuals in corporations who have come to me and said, am I not entitled to relief or protection under this measure? General speaking, I have declined to become involved in that.

I felt that we would get on a roller coaster ride to nowhere if we had Congress second-guessing, or holding oversight hearings every other day, on whether this or that should be done with regard to this or that application or inquiry under Exon-Florio, so I have stayed out of that as much as I possibly can.

But with the exception of the one incident that you cited where 100 Members of Congress got involved, I have been somewhat surprised that there has not been more involvement by Members of Congress, and I tried to write the bill that way—all this was was a bill to give the President of the United States and agencies under the President of the United States the tools to protect national security interest, but I left that decision strictly with the Executive Branch, where I think it has to be.

We all know that we have 535 Secretaries of State from time to time, and I do not believe—while we could probably afford that, I am not sure we can afford 535 Secretaries of Commerce each and every day.

Would you not say that basically, on balance, Congress has stayed pretty well out of these things?

Ambassador RICHARDSON. You could look at the question on either side. I would say that there has been rather more effort to influence these decisions than seems to me desirable. There were a number of other examples mentioned in my letter to Governor Sununu in addition to what I refer to as the most striking example, that of the letter written by 119 congressmen with regard to the Norton case, but I cited several others as well.

In general, I applaud the approach you have taken, and quite clearly it will be appropriate in due course for you to hold oversight hearings to review what has been done, to see whether you think the lines have been drawn in the appropriate place.

Senator **Exon**. I have been asked on several occasions, and in fact some of the statements that have been made by the various departments that have been involved in this, have been to the effect that well, we—the Administration—would be interested in the views that Senator Exon has on this.

I have tried to stay out of that, and I have been asked time and time again well, what specifically is covered and not covered under Exon/Florio, and I have said—I always say in response to that question, we intentionally wrote this in a very broad form and what is covered and what is not covered under national security interests under Exon/Florio in my view is no more or no less than what the President of the United States thinks is covered under the national security interest of the United States. There is a very broad policy, and I do not know how you can define it. We left it broad.

I have used the rather ridiculous example, at times, but this is honestly the way I feel about it. The President of the United States is the commander-in-chief. He has more information at his availability through his various departments and excellent assistants to make these determinations.

But I have said on more than one occasion that if a tiddlywinks manufacturer manufactured tiddlywinks to entertain the troops, and if the President of the United States made the determination that the morale of the troops would be adversely affected, then I guess the tiddlywinks manufacturer would come under the guidelines that we wrote into Exon/Florio.

Another way to state that is that it gives broad discretionary powers to the President of the United States as to what is and what is not covered, and we did not, by design, specify that as a part of the bill.

I have a couple of quick questions.

Mr. Howard, the U.S. Chamber I know occasionally polls its members and some of it is released from time to time on the very informative "It's Your Business" program that I have appeared on a time or two, and listen to when I have a chance. Has the Chamber ever done any polling on the foreign investment issue? And if so, what general results could you tell us about as to the feelings of the members of the Chamber?

Mr. **Howard**. Well, in general, there have not been any very large polls this specific question. I will note that at our 1990 annual meeting, a number of questions on a wide range of domestic and international policy issues were asked of the participants. One of the questions asked was very simple, and it was "Are you worried about foreign investment?"

There was no effort to define what worried meant, but the answer was, 40 percent said yes, 55 percent said no. The sample that was polled were primarily CEOs and other top officials of state and local chambers, and other associations that were present at that polling. But, other than that, there has been no significant poll.

I should note that by saying they are worried, that was not an expression of a desire to restrict foreign investment. The statement that the Chamber issued in November of 1988, which I summarized earlier, was the Chamber's position that reflected the more intensive policy process that we use, namely that the quality of the data that are available on a confidential basis should be upgraded in the manner I described. But that poll was not an expression of a desire to restrict any investment.

Senator EXON. Professor Graham, in your book on foreign investment, you seem to identify Japan as away from the pack, so to speak, in foreign investment policies and practices. Are Japan's investment policy and practices significantly different from other countries?

Mr. GRAHAM. They certainly do not seem to be in terms of the statutory policies. But in terms of the de facto policies, or, as one might say, the revealed policies, there certainly seem to be great differences. The level of foreign penetration of the Japanese economy is much below that of any other of the other major industrial economies.

Senator EXON. So what you are saying is the age-old problem, they might not have a tariff to stop an item from coming in, but by the time that process goes through their bureaucratic testing and evaluation procedures, it has the same effect?

Mr. GRAHAM. There seem to be barriers to entry that are subtle and not always understood, yes, sir.

Senator EXON. Do you have any concern that America is selling away its long-term prosperity?

Mr. GRAHAM. I do not really have as much concern as many people do. Incidently, in partial response to your first question but tying it to your second, I do believe that the asymmetry in de facto investment policies may be to Japan's advantage. And indeed I am working on a study right now that will make that case more clear.

In spite of that, I am not quite as worried as many people because I believe the performance of Japanese subsidiaries operating in the United States has along most dimensions, been quite good. For one, Japanese firms, have been transferring back into the United States some of the latest and best technologies that they have developed in Japan. In some cases Japanese firms are undertaking state-of-the-art research and development in the United States.

It is my suspicion that the benefits of the activities of these firms will diffuse into the U.S. economy and will not be captured entirely by the Japanese themselves, but in many cases will be captured by their domestically owned and controlled competitors. This would ultimately lead to higher productivity in the U.S. economy and higher U.S. living standards. So I am actually somewhat less pessimistic on these matters than many of the analysts that have spoken to the issue.

Senator EXON. What are foreign investors seeing in American companies that American investors apparently do not see in a whole wide range, not just national security, but products? What do the Japanese see in buying Rockefeller Center that American entrepreneurs did not see? Or is it just one more piece of evidence that the Japanese and many of our other international competitors today primarily are concerned about the great opportunity that they see, given the purchasing habits and buying power of Americans?

Mr. **GRAHAM**. With due respect, Mr. Senator, rather than use the example of Rockefeller Center, I would prefer to use the example of a high technology industry, because I think that this in many ways would be more appropriate to the nature of today's discussion. Here I would have to say that the Japanese investors certainly seem to exhibit a greater willingness to take risks with new technologies that have some probability of revolutionizing or in some major sense transforming the economy in the future, but which may not represent opportunities for immediate short-term returns, than do American investors.

Whether this willingness by the Japanese is explained by cultural reasons by government intervention, or by cost of capital considerations I am not entirely sure. But whatever the regions it certainly would seem that the Japanese have a higher propensity to invest in undertakings where prospects for short-term gains may be limited, but where prospects for long-term return, however risky, are very promising.

Ambassador **RICHARDSON**. Could I add just a word to that, Mr. Chairman?

Senator **EXON**. Certainly.

Ambassador **RICHARDSON**. And it would be applicable to Rockefeller Center as well as to high tech companies. Generally speaking, Japanese investors get a much lower rate of return on their money than American investors expect. The rate of interest is low. There are very low dividend payouts. This is illustrated by the fact that in the Tokyo Stock Exchange, the average price-earnings ratio is roughly 65 to 1 as against, say, 15 or 17 to 1 on the New York Stock Exchange.

So what looks good to a Japanese does not look that good to an American company. And of course this, in turn, could be in and of itself one of the reasons why there is such a low level of foreign investment in Japan. One of the problems, Mr. Chairman, and this may seem paradoxical, but the American managers seem to believe that the only objective of running an enterprise is to make money in the short term.

The Japanese managers believe that their objective is to grow to gain market share, and in the long term. And in that context, the result is inevitably going to be that the Japanese will gain and grow, because they have been taking lower level profits and plowing their earnings back.

Senator **EXON**. What I see more than anything else is what was known for a long time; the Japanese are much more patient than the Americans.

Mr. **MENDELOWITZ**. Senator, if I might, I would also add to the discussion. If you go to the firm level, what you find is firms in specific industries exploiting competitive advantages based upon management systems or technology that the firms had. A couple of years ago, we issued a case study on Japanese investment in the U.S. auto industry. In the course of that case study we visited all of the Japanese-affiliated auto manufacturers operating in the United States, as well as a large number of their suppliers, and talked to their workers. It was a rather extensive study. One of the plants that we visited was NUMMI, the New United Motor Manufacturers, Incorporated out in Fremont, CA, which is a joint venture between General Motors and Toyota. This is a plant which GM shut down in 1982, and managers told me that GM shut it down because basically it could not keep the plant running. If I remember correctly, they told me they had 10,000 labor grievances, absenteeism was running as high as 20 percent on certain days, and the defect rate on the vehicles coming off the end of the line was so high that the plant literally was surrounded by fields full of vehicles waiting to be fixed so they could be shipped to the dealers.

GM shut the plant down. Two years later it reopened as a joint venture, which basically is being run by Toyota, and which was restructured in terms of the manufacturing process and the management systems, to replicate the manufacturing system that Toyota uses in Japan. They hired back workers who had been laid off who worked there before. They brought back the United Auto Workers. They started out with a list of parts and component suppliers given to them by General Motors so that they could start getting American parts and component suppliers. The year I was there, there were four labor grievances instead of 10,000. The year I was there, absenteeism had dropped to one and one half percent instead of 20 percent, and GM executives told me, based upon their own internal audits of the NUMMI facility, the cars produced there was the most efficiently produced, lowest defect product in the GM inventory at the time. Yet it had the same workers, American workers, the same union, the UAW, and was using American parts and component suppliers.

The only thing that had substantially changed was the management systems: how the workers were organized, how the production line flowed, and how the product was produced. That was the case of a foreign competitor, basically, exploiting a technology advantage that it had, and that technology advantage was its management systems.

Senator EXON. Gentlemen, it has been a very interesting morning. We appreciate so much your being here and your patience. There may be additional questions for the record. If there are, we would appreciate your responding as quickly as possible. We thank you for your input and value your advice. We are adjourned.

[Whereupon, at 12:27 p.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

NAM
National Association
of Manufacturers

International Economic Affairs

July 20, 1990

The Honorable J. James Exon
Committee on Commerce, Science and Transportation
United States Senate
254 Russell Senate Office Building
Washington, DC 20510

Dear Senator Exon:

On behalf of the National Association of Manufacturers, I would like to thank you for the excellent and informative hearings, which you chaired on July 19, regarding the foreign investment data issue and your bill, S. 2516. I would like to submit the following comments for the record of the hearing.

First, I would like to summarize our views on S. 2516. These comments are based on testimony that I presented on the companion measure in hearings held last month in the House Energy and Commerce Committee. NAM has no objections to S.2516. If the Congress and the Administration believe that this legislation will improve significantly the quality of U.S. data on foreign investment, then NAM supports the enactment of your bill into law.

On the other hand, NAM does not support the amendment to the bill proposed by Senator Murkowski. This amendment would allow the foreign investment review body under the current Exon-Florio law (known in abbreviation as CFIUS) access to confidential individual company reports under the International Investment Survey Act. During your hearing, the representative of the Treasury Department indicated that the data in these reports, compiled for statistical purposes, is the wrong kind and not in sufficient detail for the purpose of enforcing the Exon-Florio law. And, as he indicated, the President already has full subpoena authority under the Exon-Florio law to require parties in a transaction to provide whatever information may be required to complete the national security review process.

Furthermore, as Professor Edward Graham indicated in discussing this question, no other major industrial country mandates that investment review agencies should have access to reports on investment filed with statisical agencies. In other words, such action by the U.S. government would create a bad precedent regarding the mixing of data and information filed for statistical and regulatory purposes. NAM supports the position of the Treasury and Commerce Departments in opposing this amendment.

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The Honorable J. James Exon
July 20, 1990
Page two

I would like to add one other, more general point to these comments. During the hearing it was stated by several witnesses that foreign investing companies in the United States, particularly those from Japan, seem less risk-averse, and more patient in awaiting positive commercial results from their investments. American managers were criticized as being too oriented toward short-term results. This is a widely held view, but one that we believe may attribute too much to the sagacity to foreign managers.

As Senator Burns implied in some of his remarks, a large part of the problem for U.S.-owned companies is traceable to the conditions created by the U.S. legal and financial system. Under pressure to produce short-term results by banks and investors, U.S. companies often do not have the "deep pockets" that may be required to nurture long-term market or product development. This problem is exacerbated by the relatively high cost of capital in the United States, which has been noted by many analysts of the question of U.S. international competitiveness.

Once again, I would like to express our appreciation to you for chairing these hearings, and to request that you add this letter to the hearing record.

Sincerely,

Stephen Cooney

Stephen Cooney
Director, International
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  of Manufacturers

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July 25, 1990

Senator J. James Exon
330 SHOB
Washington, DC 20510-2702

Dear Senator Exon:

Thank you again for allowing me to testify before the Senate Commerce Committee on the matter of Federal data pertaining to foreign direct investment in the United States.

One question you asked me deserves a somewhat more complete answer than I gave you yesterday. Your question, to the best of my recollection, was "why do Japanese investors seem to be willing to invest in activities in the United States that U.S. investors are not?"

Let me answer this by way of an example. Suppose that there exists a U.S. high technology venture that has the following characteristics: It is for sale. It will pay its shareholders dividends expected to equal \$10 million in exactly ten years time. It will pay no dividends before ten years are up, and upon payment of the one dividend, it will go out of business and yield no net liquidation value.

Suppose further that there exists a Japanese firm that is a potential investor in this venture. This Japanese firm faces a cost of capital of 7% per annum. There also exists a potential U.S. investor, but this U.S. firm faces a cost of capital of 15% per annum. Both of these investors are risk neutral. (The figures for the cost of capital in fact are typical as between Japanese and U.S. firms raising funds in their domestic capital markets.)

Of relevance to your question then is the following question: What is the maximum price either investor will pay for this high technology venture? Clearly, the maximum either will pay is the net present value of \$10 million to be paid in ten years time. Otherwise stated, each investor will pay up to an amount such that if that amount were to earn compound interest at a rate equal to the investor's cost of capital, the compounded value at the end of ten years would be $10 million.

For the Japanese investor paying a 7% cost of capital, that amount is a smidgen over $5.08 million. For the U.S. investor, paying a 15% cost of capital, the amount is a smidgen over $2.47 million.

In other words, the Japanese investor will, pushed to the limit, bid slightly more than twice for the same investment opportunity as will the U.S. investor just for reasons of cost of capital.

Here, one might note all of the following: (1) the Japanese is not any more willing to take on risk than is the U.S. investor (both by assumption are risk neutral; but because of the way I have constructed the example, the Japanese investor is ignoring exchange risk, given that the Japanese cost of capital is for funds denominated in yen); (2) the Japanese is not necessarily taking a "longer term" perspective than the American (both are willing to invest in this venture, but the Japanese simply will outbid the American); and, finally, (3) although this example clearly is somewhat artificial, the most important elements in it, the two costs of capital, are consistent with reality.

In my oral response to your question, I said that many U.S. managers seem to be unwilling to take technological risks and exhibit excessively short term horizons in their thinking relative to their Japanese counterparts, and I believe both assertions to be true in at least some cases. The point of the above is then that this "short termist" behavior can be induced simply by cost of capital considerations. To the extent that U.S. managers are actually more risk averse than are their Japanese counterparts, this behavior will be reinforced.

There is a further relevant question that one might ask, namely, why is the Japanese cost of capital so much lower than the U.S. one? There are many reasons, but to professional economists the most important one is a national rate of savings that is significantly higher in Japan than in the United States. (Here I must add, to be honest to my profession, that some element of imperfection in international financial markets must also be present.)

Herein lies a major linkage between issues that, among economists, concern those with a primarily "macro" and those with a primarily "micro" orientation. The former worry about matters such as aggregate national savings and investment, while the latter worry about things such as competitiveness of individual firms. The linkage is that the very low U.S. savings rate is itself a source of shortcomings of U.S. firms in the domain of competitiveness. In the example I have offered, for instance, ownership of the technology could be a determinant of future competitiveness. But for reasons that can be traced ultimately to low U.S. savings relative to those of Japan, the ownership will fall to the Japanese.

This example and the implications that one might draw from it provide a much better answer to your question than the one I presented orally, and perhaps a way can be found to incorporate this written response into the record of the testimony. If this is not possible, I hope that the reasoning contained in this letter might find its way into the current debate in the Senate concerning U.S. competitiveness through some other channel.

If I can answer further questions you or your staff might wish to pose, please do not hesitate to call on me to do so.

Sincerely yours,

Edward M. Graham
Research Fellow

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